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No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Petitioner

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; HERSCHEL HENSON

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Petitioner

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821; LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HANSHEW, DISABLED RETIREE; JOHN DOE; MARY DOE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether the United States Court of Appeals' decision to disregard a collectively bargained eligibility rule of an employee benefit plan, which the court acknowledged as denying eligibility to certain individuals, and to substitute a rule devised by the court to render those individuals eligible for benefits, contravenes national labor policy and conflicts with the Court's decision in *United Mine Workers of America Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982).

2. Whether the court's decision to enjoin the plan's fiduciaries from enforcing the terms of the plan document is contrary to Sections 402 and 404 of the Employee Retirement Income Security Act of 1974, conflicts with decisions of other Circuits, and threatens the continuation of benefits for more than 4,500 eligible beneficiaries.

PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS

The parties to the consolidated appeals are named in the caption of this petition, except for the Trustees of the United Mine Workers of America 1974 Benefit Plan and Trust. They are Joseph P. Connors, Sr., Donald E. Pierce, Jr., William Miller, William B. Jordan, and Paul R. Dean.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS IN THE COURT OF APPEALS	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	3
Statement of Proceedings	3
Statement of Facts	4
REASONS FOR GRANTING THE PETITION	11
I. The Court of Appeals' decision to invalidate the explicit terms of a collectively bargained welfare benefit plan is a serious and unwarranted interference with the collective bargaining process. As such, it is in conflict with applicable decisions of this Court and of other Courts of Appeals	11
II. The Court of Appeals' decision to prohibit the Trustees from applying the express terms of the plan document violates sections 402 and 404(a)(1)(D) of ERISA and conflicts with the decisions of other Courts of Appeals	16
CONCLUSION	22

TABLE OF AUTHORITIES

	Page
CASES	
Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971)	16
Arroyo v. United States, 359 U.S. 419 (1959)	17
Carbon Fuel Co. v. United Mine Workers of America, 444 U.S. 212 (1979)	12
Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc., 472 U.S. 559 (1985)	18
Cummings by Techmeier v. Briggs & Stratton Retirement Plan, 797 F.2d 383 (7th Cir.), *cert. denied*, 107 S.Ct. 648 (1986)	19, 21
District 2, UMWA v. Helen Mining Co., 762 F.2d 1155 (3d Cir.), *cert. denied*, 474 U.S. 1006 (1985)	13, 21
District 17 v. Allied Corporation, 765 F.2d 412 (4th Cir.) (*en banc*), *cert. denied*, 473 U.S. 905 (1985)	13
District 29, United Mine Workers of America v. Royal Coal Company, 768 F.2d 588 (4th Cir. 1985)	2, 3, 9
H.K. Porter Co. v. NLRB, 397 U.S. 99 (1970)	12, 15
Local 24 of I.B. of T., etc. v. Oliver, 358 U.S. 283 (1959)	12
Moore v. Reynolds Metals Co. Retirement Plan, 740 F.2d 454 (6th Cir. 1984), *cert. denied*, 469 U.S. 1109 (1985)	13
Nachwalter v. Christie, 805 F.2d 956 (11th Cir. 1986)	20, 21
NLRB v. Amax Coal Co., 453 U.S. 322 (1981)	18
NLRB v. American Nat. Ins. Co., 343 U.S. 395 (1952)	12
NLRB v. Wooster Div. of Borg-Warner Corp., 356 U.S. 342 (1958)	16
Norman v. United Mine Workers of America Health and Retirement Funds, 755 F.2d 509 (6th Cir. 1985)	13

Page

Northwest Administrators, Inc. v. B.V. & B.R., Inc., 813 F.2d 223 (9th Cir. 1987) 21
Pompano v. Michael Schiavone & Sons, Inc., 680 F.2d 911 (2d Cir.), *cert. denied*, 459 U.S. 1039 (1982)..... 21
Phillips v. Kennedy, 542 F.2d 52 (8th Cir. 1976).. 20
Robinson v. UMWA Health and Retirement Funds, 640 F.2d 416 (D.C. Cir. 1981), *rev'd*, 455 U.S. 562 (1982)..... 12
Short v. United Mine Workers of America 1950 Pension Trust, 728 F.2d 528 (D.C. Cir. 1984)... 13
Sinai Hospital v. National Benefit Fund for Hospital & Health Care Employees, 697 F.2d 562 (4th Cir. 1982) 18
United Mine Workers of America Health and Retirement Funds v. Robinson, 455 U.S. 562 (1982)..... 12, 13, 17

STATUTES

Employee Retirement Income Security Act of 1974
29 U.S.C. § 1102(a)(1)..... 17, 19, 20
29 U.S.C. § 1102(b)(4) 17
29 U.S.C. § 1104(a)(1)(D) 18, 19
29 U.S.C. § 1132..... 3, 4

Internal Revenue Code of 1954
26 U.S.C. § 401..... 17

Judiciary and Judicial Procedure, Title 28, United States Code
28 U. S. C. § 1254(1)..... 2

Labor Management Relations Act, 1947
29 U.S.C. § 185..... 3, 4
29 U.S.C. § 186(c)(5)(B)..... 17

National Labor Relations Act
29 U.S.C. § 158(d) 2, 11

REGULATIONS
Treas. Reg. § 1.401-1(a)(2) (1956)..... 17

Page

LEGISLATIVE MATERIAL

93 Cong. Rec. A-2252 (1947) 17

OTHER AUTHORITIES

G. BOGERT & G. BOGERT, *Law of Trusts and Trustees*, § 814 (2d rev. ed. 1980) 18

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Plan" or "Plan") respectfully petitions for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit to review the judgment entered by that Court on August 13, 1987 in two consolidated appeals, *District 29, United Mine Workers of America and Herschel Henson v. United Mine Workers of America 1974 Benefit Plan and Trust*, No. 86-3709(L), and *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust*, No. 87-3018 (4th Cir., August 13, 1987), *petition for rehearing denied* (October 16, 1987).

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit, reported at 826 F.2d 280, appears at A. 1a.[1] The judgment of the United States District Court for the Southern District of West Virginia from which appeal was taken in No. 87-3018, and the District Court's memorandum opinion, reported at 8 Empl. Ben. Cas. (BNA) 1556 (S.D. W.Va. 1987), appear at A. 9a and 11a, respectively. The judgment of the United States District Court for the Southern District of West Virginia granting a preliminary injunction from which appeal was taken in No. 86-3709(L), and the District Court's unreported memorandum opinion, appear at A. 30a and 32a, respectively. The order of the Court of Appeals denying the petition for rehearing and suggestion for rehearing *en banc* appears at A. 40a. The opinion of the United States Court of Appeals for the Fourth Circuit in a related case, *District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985), appears at A. 42a.

JURISDICTION

The judgment of the Court of Appeals was entered on August 13, 1987. A. 1a. The petition for rehearing and suggestion for rehearing *en banc* were denied on October 16, 1987. A. 40a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves section 8(d) of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 158(d), and sections

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[1] The appendix to the Petition is bound in a separate volume, and references to it are denoted "A. ____." References to the three volume joint appendix filed in the Court of Appeals in No. 87-3018 are denoted "____J.A. ____." References to the one volume joint appendix filed in No. 86-3709(L) are denoted "86-3709(L) J.A. ____."

402 and 404 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1102 and 1104. These statutory provisions are set forth at A. 102a.

STATEMENT OF THE CASE

Statement of Proceedings

On March 8, 1985, District 29, United Mine Workers of America ("UMWA" or "Union"), Local Unions 5821 and 6046, UMWA, and a number of individual plaintiffs filed a complaint against Royal Coal Company ("Royal") and the 1974 Benefit Plan alleging that one or both of them is required to provide health benefits to the individual plaintiffs, who are pensioners or the dependents of pensioners who last worked for Royal. Federal jurisdiction was founded on section 301 of the Labor Management Relations Act, 1947 ("LMRA), 29 U.S.C. § 185, and section 502 of ERISA, 29 U.S.C. § 1132. A. 20a.

On March 12, 1985 and April 2, 1985, the District Court issued a temporary restraining order and a preliminary injunction against Royal requiring it to provide health benefits to the individual plaintiffs on the grounds that the expired National Bituminous Coal Wage Agreement of 1981 ("1981 Wage Agreement") required Royal to provide lifetime health benefits to its pensioners. I J.A. 31.

Royal appealed from this order, and the United States Court of Appeals for the Fourth Circuit vacated the preliminary injunction, deciding that under the terms of the 1981 Wage Agreement, Royal's obligation to provide health benefits existed only for the life of that Agreement. *District 29 v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985); A. 42a. The Court remanded the matter with instructions to determine the damages suffered by Royal under the preliminary injunction and to decide whether the 1974 Benefit Plan is responsible for continued health benefits under a provision of the Plan that requires it to pay benefits to pensioners only when their "last signatory employer" is "no longer in business." *Id.* at 592; A. 49a.

On August 13, 1985, the District Court issued a preliminary injunction against the 1974 Benefit Plan, deciding that each pensioner's "right to lifetime health benefits vest[s] upon his retirement" and that the 1974 Benefit Plan is required to provide those benefits whenever the pensioner's last employer "is no longer able or required to provide such benefits . . .". I J.A. 39, 47, 50.

The 1974 Benefit Plan thereafter moved for summary judgment on the merits. Without acting on that motion, the District Court conducted an evidentiary hearing. On January 5, 1987, the District Court entered a Judgment Order and a Memorandum Opinion granting a permanent injunction against the 1974 Benefit Plan requiring it to provide health benefits to the individual plaintiffs and others similarly situated. A. 9a, 11a. The 1974 Benefit Plan appealed from that judgment in No. 87-3018.

On April 10, 1986, District 29, two local unions, and an individual pensioner filed with the same District Judge a complaint and an application for a temporary restraining order against Manlo Mining Company ("Manlo"), the 1974 Benefit Plan, and other defendants. Federal jurisdiction was founded on section 301 of the LMRA, 29 U.S.C. § 185, and section 502 of ERISA, 29 U.S.C. § 1132. A. 34a. The *Manlo* action sought a preliminary injunction against the defendants requiring one of them to provide the individual pensioner with health benefits. On July 11, 1986, the District Court issued a preliminary injunction in *Manlo* against the 1974 Benefit Plan, and the Plan appealed in No. 86-3709(L).

The Fourth Circuit consolidated the appeals for argument and decision. On August 13, 1987, the Fourth Circuit issued a judgment and opinion affirming the District Court in both cases. A. 1a. The 1974 Benefit Plan moved for rehearing and suggested rehearing *en banc*. The motion and suggestion were denied by order dated October 16, 1987. A. 40a.

Statement of Facts

Petitioner 1974 Benefit Plan is a collectively bargained, multiemployer welfare benefit plan providing health benefits

to a limited class of pensioners and their dependents who receive pensions from the United Mine Workers of America 1974 Pension Plan. The 1974 Benefit Plan was originally established by the National Bituminous Coal Wage Agreement ("Wage Agreement") of 1974, an agreement governing the terms and conditions of employment in most of the unionized sector of the nation's bituminous coal industry. A. 13a, 33a.

As originally established, the 1974 Benefit Plan covered all active bituminous coal miners represented by the International Union, UMWA. It also covered all miners who retired and qualified for a pension under the parallel UMWA 1974 Pension Plan. The plan of benefits and the trust instrument were agreed upon in collective bargaining between the Union and the Bituminous Coal Operators' Association, Inc. (the "BCOA"), a multiemployer bargaining agent for coal producers. These negotiated plan documents were expressly incorporated by reference and made a part of the 1974 Wage Agreement, to which the BCOA's members and hundreds of independent employers subscribed. A. 15a. Benefits under the Plan were paid out of a single trust, to which each signatory operator paid contributions. I J.A. 65.

During the term of the 1974 Wage Agreement, the benefit payments out of the trust exceeded the contractually-fixed contributions made by the coal operators. As a result, the Trustees of the Plan were forced to reduce the level of benefits. By the end of the Agreement the Plan was completely insolvent, and all benefit payments were terminated. A. 16a; I J.A. 114, 121, 141, 149.

Negotiations for a new Wage Agreement began in late 1977 and continued through a strike that lasted 111 days. I J.A. 115, 153. A principal issue that divided the Union and the BCOA was the mechanism for providing health benefits for active and retired miners. The BCOA insisted that the 1974 Benefit Plan be abolished, and with it the collective responsibility for funding health care. In its place, the BCOA proposed that each company establish its own plan to provide benefits for its employees and its pensioners. The Union

resisted this proposal, and insisted that a single multi-employer plan, with the advantage of spreading the costs of health care over the entire industry, be retained. A. 16a; I J.A. 193–94, 303–04.

After a two-month deadlock, the parties reached a tentative agreement abolishing the 1974 Benefit Plan and establishing individual employer plans. This agreement was rejected by the Union's Bargaining Council. A. 16a; I J.A. 157–58, 302–06. The negotiators then reached a compromise. The Union accepted the BCOA demand that each company establish its own health plan. In exchange, the BCOA agreed to retain a limited 1974 Benefit Plan for the purpose of providing benefits to the pensioners of companies who went out of business during the term of the new Wage Agreement. In addition, the BCOA agreed to a "guaranty clause" under which the operators agreed to finance all promised benefits under the pension and health plans during the term of the Wage Agreement, even if the negotiated contributions proved insufficient to pay the promised benefits. This compromise won acceptance from the Union membership and became the 1978 Wage Agreement. A. 16a, 71a; I J.A. 119-20; II J.A. 99.

Under this newly-negotiated agreement, health benefit coverage under the 1974 Benefit Plan was limited to a class of pensioners whose signatory employers, and any successors thereto, became "no longer in business" during the term of the 1978 Wage Agreement. The plan document also specified that the period of eligibility for benefits for this class expired upon the termination of the 1978 Wage Agreement in 1981. A. 50a; II J.A. 43. The term "no longer in business" was not defined in the Plan document. Therefore, the Trustees of the 1974 Benefit Plan adopted an administrative interpretation of the term, and decided that an employer was "no longer in business" if it ceased to receive income from coal operations and left no "successor or assign" in its stead. A. 18a; I J.A. 126-27, 195; III J.A. 269.

The Trustees' definition of "no longer in business" generated controversy between the collective bargaining parties.

In the BCOA's view, the Trustees' definition was overly broad and permitted companies to "dump" liabilities on the Plan by manipulating corporate structures. The BCOA therefore sought an amendment to the Plan explicitly defining "no longer in business" in order to prevent abuses it perceived under the Trustees' definition. At the same time, the Union sought to expand coverage under the 1974 Benefit Plan to include certain active miners on layoff who lost benefits when their employers became "no longer in business." A. 17a.

Ultimately, after mid-contract negotiations in 1980 and full contract negotiations for a new Wage Agreement in 1981, the Union and the BCOA agreed to the Union's demand to include laid off miners in the class of beneficiaries eligible for 1974 Benefit Plan benefits when an employer became "no longer in business." At the same time, the parties arrived at their own explicit definition of "no longer in business," which they incorporated into both the 1981 Wage Agreement and the Plan document. A. 17a; I J.A. 164, 205-07; III J.A. 270. Under that definition, a coal company would be deemed "no longer in business" only if it ceased to receive income from the production or sale of coal, ceased employing persons covered under the Wage Agreement, and was "financially unable" to provide health benefits to its active and retired employees. "Financially unable" to provide benefits was explicitly defined to include both the company that ceased operations and the company's "successors or assigns, if any, or any other related division, subsidiary or parent corporation, regardless of whether covered by this Wage Agreement or not . . . ." A. 74a. The parties again agreed, through express language in the amended Plan document, that eligibility for benefits would terminate at the expiration of the 1981 Wage Agreement in 1984. A. 50a.

The Trustees consistently applied this new negotiated definition to cases that arose during the forty-month term of the 1981 Wage Agreement. The Union became dissatisfied with the results. In the negotiations leading to the 1984 Wage Agreement, the Union therefore proposed substantial changes to both the separate employer-sponsored plans and to the 1974 Benefit Plan. With respect to the employer plans, the

Union proposed an extensive amendment specifying that pensioners' health benefits were to be considered "vested," and that each employer was responsible for providing benefits to its pensioners, regardless of whether the employer became a party to future Wage Agreements or not. A. 100a-02a; I J.A. 168-69, 197-98, 240, 243; III J.A. 163. The Union also insisted that the 1974 Benefit Plan be amended to provide benefits to any pensioners whose last employer was either no longer in business or had no legal obligation to provide benefits. A. 100a-02a; I J.A. 166-67.

The Union pressed these demands until the final day of bargaining, and the BCOA opposed them, contending that the Union's proposed extensions were inconsistent with prior agreements limiting the scope of health benefits. I J.A. 170-72. Ultimately, the Union abandoned its proposals, and no substantive changes were made to the employer plans or the 1974 Benefit Plan. Thus, under the Plan document as amended in the 1984 Wage Agreement, eligibility for benefits continued to be limited to the class of pensioners and laid off miners whose employers met the negotiated definition of "no longer in business," and the duration of benefits for this class was limited to the term of the new Agreement. A. 53a-54a, 56a, 87a; I J.A. 199; II J.A. 121.

The appeals consolidated below involve the Trustees' application of the Plan's "no longer in business" provisions in two similar situations. In No. 86-3709(L), Herschel Henson, the individual plaintiff, retired from Manlo Mining Company. Manlo's parent corporation, Gopher Mining Company ("Gopher") assumed responsibility for providing health benefits to Henson. A. 33a. Neither Manlo nor Gopher signed the 1984 Wage Agreement. A. 33a. In June 1985, Gopher terminated Henson's benefits. 86-3709(L) J.A. 64, 70. Gopher is the wholly-owned subsidiary of S.J. Groves Co., a large construction company. 86-3709(L) J.A. 199. Nevertheless, the District Court granted a preliminary injunction, requiring the 1974 Benefit Plan to provide Henson with health benefits. A. 30a-31a.

In No. 87-3018, several individual pensioners, on behalf of themselves and a group of approximately 70 pensioners

who had last worked for Royal Coal Company, brought an action against Royal and the 1974 Benefit Plan seeking health benefits. In the first phase of this case, the pensioners sought a preliminary injunction requiring Royal to continue to provide them with health benefits, even though Royal's 1981 Wage Agreement had expired and it did not become signatory to the successor Wage Agreement. The pensioners relied on the 1981 Wage Agreement's "General Description of the Health and Retirement Benefits" provided under the Agreement. The General Description provided that a miner who qualified for a pension "will be entitled to retain his Health Services card for life . . .," and that upon his death, his widow will continue to receive health benefits "until her death or remarriage . . . ." A. 81a. The District Court reasoned that this language constituted a promise by each individual signatory to the 1981 Wage Agreement to provide lifetime health benefits to its own group of pensioners and that this obligation survived the expiration of the Wage Agreement. The District Court concluded that the pensioners had demonstrated a probability of success on the merits and enjoined Royal to resume the payment of health benefits. A. 44a; I J. A. 36-37.

Royal appealed, and a panel of the Fourth Circuit reversed. *District 29 v. Royal Coal Co.*, 768 F.2d 588 (4th Cir. 1985); A. 42a. The panel considered a provision of the 1981 Wage Agreement that required employers to guarantee the payment of benefits, but only "during the term of the Agreement . . . ." In the panel's view, this express limitation demonstrated that, as a matter of law, no benefit obligation extended beyond the expiration date of the Wage Agreement. A. 48a-49a. The panel found further support for this conclusion in testimony received by the District Court from negotiators for both the Union and the BCOA, who agreed that " . . . all rights and benefits under the collective bargaining agreements were open for negotiation every three years." A. 48a (citation omitted). The panel therefore vacated the injunction against Royal and remanded the matter for a determination of whether the 1974 Benefit Plan was responsible for benefits under the Plan's "no longer in business" eligibility standard. A. 49a.

Upon remand, the District Court found that Royal was the subsidiary of another corporation and that this corporation "is financially able to provide benefits to Royal's pensioners . . ." within the meaning of the Plan document. A. 20a. Notwithstanding these findings, and notwithstanding the Plan's express limitation of benefits to situations where the coal company and its parent corporation are "financially unable" to provide benefits, the District Court granted a permanent injunction against the 1974 Benefit Plan. It based this ruling on its appraisal of testimony concerning bargaining history, admitted over the Plan's objection, and its conclusion that the bargaining parties' true intention, despite their written agreements memorialized in the Plan document, was to make the 1974 Benefit Plan responsible whenever the employer "is no longer able *or required* to provide such benefits." A. 27a-28a (emphasis added).

A panel of the Fourth Circuit agreed with the District Court that ". . . it was the intention of the [collective bargaining] parties to provide lifetime benefits . . . ." A. 6a. The panel recognized, however, that it was bound by the Court's earlier decision that " . . . neither the former employer nor its corporate successor is legally liable for providing these health benefits." A. 6a. The panel likewise recognized that the bargaining parties formulated a " . . . patent limitation of the liability of the 1974 Benefit Plan and Trust to provide health benefits only 'during the terms of this agreement,' and only where the individual employer is 'no longer in business,'. . . ." A. 5a. Moreover, on the undisputed facts found by the District Court, the panel conceded that " . . . the literal provisions triggering the liability of the 1974 Benefit Plan . . . are not satisfied." A. 5a.

Nevertheless, the panel decided that ". . . we will not permit the 1974 Benefit Plan and Trust to escape liability by its strict adherence to the literal terms in the agreement." A. 6a-7a. Instead, the panel decided to reject the bargained-for "patent limitation" on the Plan's liability and impose on it an unrestricted obligation to provide benefits whenever a signatory employer itself ceases to have a legal obligation to provide benefits. A.7a.

REASONS FOR GRANTING THE PETITION

I. THE COURT OF APPEALS' DECISION TO INVALIDATE THE EXPLICIT TERMS OF A COLLECTIVELY BARGAINED WELFARE BENEFIT PLAN IS A SERIOUS AND UNWARRANTED INTERFERENCE WITH THE COLLECTIVE BARGAINING PROCESS. AS SUCH, IT IS IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEALS.

These consolidated appeals presented a single question to the Court of Appeals—whether the individual applicants for benefits have satisfied the collectively bargained rules governing eligibility for benefits from the 1974 Benefit Plan. A panel of the court affirmatively concluded that they have not. Nevertheless, the panel enjoined the Plan to disregard the explicit terms of the governing agreement embodied in the Plan document in order to reach a result that, in the panel's view, is more in keeping with the bargaining parties' generalized intent. The panel reached this result notwithstanding a history of explicit bargaining, over the course of three successive Wage Agreements, that culminated in the rejection of proposals designed to effectuate the very result desired by the panel. The panel's decision to disregard the parties' agreement and to substitute its own view of what the parties intended is in fundamental conflict with national labor policy. The decision therefore warrants review by this Court.

Section 8(d) of the NLRA defines collective bargaining as

> . . . the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment . . . but such obligation does not compel either party to agree to a proposal or require the making of a concession . . . .

29 U.S.C. § 158(d); A. 102a.

Accordingly, the Supreme Court has long recognized that the policy of the national labor laws is to promote

collective bargaining, "free of any Government compulsion to agree to a [particular] proposal, or even reach an agreement. . . ." *Carbon Fuel Co. v. United Mine Workers of America*, 444 U.S. 212, 219 (1979). In line with that policy, the Court has consistently rejected attempts by the National Labor Relations Board and other governmental bodies to substitute their judgment concerning the desirability of substantive provisions of labor agreements for that of the collective bargaining parties. *E.g., NLRB v. American Nat. Ins. Co.*, 343 U.S. 395, 404 (1952); *Local 24 of I.B. of T., etc. v. Oliver*, 358 U.S. 283, 295-96 (1959). Instead, the Court has recognized that "[w]ithin the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed." *Local 24 of I.B. of T., etc. v. Oliver*, 358 U.S. at 295. Indeed,

> . . . it was recognized from the beginning that agreement might in some cases be impossible, and it was never intended that the Government would in such cases step in, become a party to the negotiations and impose its own views of a desirable settlement.

H.K. Porter Co. v. NLRB, 397 U.S. 99, 103 (1970).

The Court has made it abundantly clear that this policy of noninterference in the substantive terms of a collective bargaining agreement is fully applicable to an employee benefit plan embodied in such an agreement. *United Mine Workers of America Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982). In *Robinson*, a unanimous Court reversed a decision of the District of Columbia Circuit holding that the terms of the collectively bargained UMWA 1950 Benefit Plan and Trust are subject to judicial review for reasonableness. *Robinson v. UMWA Health and Retirement Funds*, 640 F.2d 416 (D.C. Cir. 1981). In the Court's words, ". . . when neither the collective bargaining process nor its end product violates any command of Congress, a federal court has no authority to modify the substantive terms of a collective-bargained contract." 455 U.S. at 576 (footnote omitted). And, where the terms of a collectively bargained

employee benefit plan ". . . do not violate federal law or policy, they are entitled to the same respect as any other provision in a collective-bargaining agreement." *Id.* at 575. *Accord, District 2, UMWA v. Helen Mining Co.*, 762 F.2d 1155 (3d Cir.), *cert. denied*, 474 U.S. 1006 (1985); *Norman v. United Mine Workers of America Health and Retirement Funds*, 755 F.2d 509 (6th Cir. 1985); *Short v. United Mine Workers of America 1950 Pension Trust*, 728 F.2d 528 (D.C. Cir. 1984); *see Moore v. Reynolds Metals Co. Retirement Plan*, 740 F.2d 454, 456 (6th Cir. 1984), *cert. denied*, 469 U.S. 1109 (1985) (courts may not review for reasonableness the terms of a noncollectively-bargained benefit plan established by the employer).

The Court of Appeals ignored these decisions and decided to substitute its own definition of eligibility for that adopted by the parties. It did so because, in the panel's view, "[i]t is likely that the parties in negotiating . . . simply did not consider . . ." the consequences of the definition for which they bargained. A. 7a. The panel's decision to rectify the flaws it perceived in the parties' agreement was reached in the face of a ten-year history of bargaining over the rule in question.

In 1977, the Union and the BCOA began a prolonged negotiation, accompanied by a strike, over the mechanisms for providing health care for retired miners. After the failure of a tentative agreement, the parties agreed to a structure in which individual employer plans would be primarily responsible for providing benefits to active and retired miners. The 1974 Benefit Plan was retained to cover a limited group of pensioners whose employers went out of business and discontinued health coverage. A. 50a; I J.A. 160, 211-12. However, in reaching agreement on this overall structure, the parties left the phrase "no longer in business," a critical term in the 1974 Benefit Plan, undefined. The Trustees of the Plan therefore adopted a definition of the term and applied it uniformly during the term of the 1978 Wage Agreement. A.18a; *District 17 v. Allied Corporation*, 765 F.2d 412, 416 (4th Cir.) (*en banc*), *cert. denied*, 473 U.S. 905 (1985).

The BCOA became concerned that the Trustees' definition was susceptible to manipulation by some companies, and therefore proposed in midcontract negotiations in 1980 and in full negotiations in 1981 that a more restrictive definition be adopted by the parties. The Union agreed. In exchange, the Union bargained for and obtained an amendment to the Plan extending coverage to laid off employees whose employers became "no longer in business" as defined by the parties. A. 17a.

During the course of the 1981 Agreement, the Union became dissatisfied with the operation of the agreed definition. Accordingly, in the negotiations for the 1984 Wage Agreement, the Union proposed extensive modifications to the health benefit provisions of the contract. Under the Union's proposal, each employer would acknowledge that its pensioners were vested in lifetime health benefits and that the employer's obligation survived the expiration of the new contract. A. 100a. The Union further proposed that the 1974 Benefit Plan be amended to require the Plan to provide benefits whenever an employer became "no longer in business" or whenever a pensioner "has no express statutory or case-law defined right of recovery with a reasonable prospect of recovery from" his employer and its affiliates. A. 101a. Finally, the Union proposed that the Trustees of the Plan be required to "reconsider all 'out of business' determinations made pursuant to the NBCWA of 1981 under the criteria established herein." A. 101a.

The Union advanced these proposals throughout, and the BCOA rejected them throughout. I J.A. 168–69. Finally, on the last day of bargaining the Union withdrew the proposals and the parties reached agreement. I J.A. 199. As a result, the "literal terms" of the 1974 Benefit Plan and its "no longer in business" definition were readopted without change by the Union and the BCOA. A. 53a-56a, 87a-88a.

It is readily apparent that the Court of Appeals' refusal to enforce these terms represents nothing more than its own dissatisfaction with the outcome of the parties' negotiations.

This dissatisfaction led the court to modify the parties' agreement, and by doing so, the court has

> violate[d] the fundamental premise on which the [National Labor Relations] Act is based—private bargaining under governmental supervision of the procedure alone, without any official compulsion over the actual terms of the contract.

H.K. Porter Co. v. NLRB, 397 U.S. at 108.

The consequences of this action are significant. In the negotiations over the 1978 Wage Agreement, the parties were uncertain of the level of contributions needed to fund the restructured 1974 Benefit Plan. They agreed to a contribution rate of two cents per hour. By the end of the 1978 Agreement, the parties realized that the Plan had accumulated a substantial surplus in excess of the needs of the approximately 1,800 pensioners, and a like number of dependents, who qualified for benefits. Therefore, in the 1981 Wage Agreement, and again in the 1984 Wage Agreement, the parties agreed that no contributions to the Plan would be required. A. 19a, 76a, 89a. At the same time, they agreed to extend the period of eligibility for those pensioners who had qualified under the previous contracts. A. 50a-51a, 53a-54a.

At present, the 1974 Benefit Plan covers more than 4,500 retired miners, their spouses, and their dependents under the express terms of the Plan. The decisions of the District Court and the Court of Appeals have spawned more than 22 additional lawsuits, and numerous additional threats of suit, involving more than 6,000 pensioners and their dependents.[2]

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[2] For example, since the decision below, the 1974 Benefit Plan has been notified that the coal mining affiliates of the LTV Corporation, currently operating under the protection of Chapter XI of the Bankruptcy Code, will not sign a new Wage Agreement covering their more than 2,500 pensioners and dependents upon the expiration of the 1984 Wage Agreement on January 31, 1988. Additionally, an estimated 1,413 pensioners and their dependents are currently receiving benefits under preliminary injunctions issued by the United States District Court for the Southern District of West Virginia in the wake of the decisions for which review is sought.

If the courts follow the rule announced by the Court of Appeals, the Plan's assets will be exhausted before the end of 1989. Thus, the more than 4,500 beneficiaries will be left without the health care that was explicitly bargained for and promised in the national coal wage agreements.

Of course, the bargaining parties may agree to resume contributions to the Plan. However, they are not compelled to do so. Indeed, because the question of contributions to the Plan involves benefits for non-bargaining unit members, it may be viewed as a nonmandatory subject of bargaining that either party may simply refuse to discuss. *See Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 180-82 (1971); *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). Thus, there can be no assurance that the Union and the BCOA will agree to pay the costs of the Court of Appeals' decision to disregard the plain terms of their prior agreements.

Whether or not the parties agree to continue this benefit coverage, their bargaining over future benefits will be profoundly affected by the Court of Appeals' decision to reallocate the fruits of their past agreements. In the future, any written agreement over benefits that the parties achieve will be made in the face of uncertainty over whether the courts will enforce it in accordance with its terms. That uncertainty can only adversely affect the future course of labor relations in the coal industry. Indeed, the Court of Appeals' decision could generate similar uncertainty in all bargaining relationships nationwide.

II. THE COURT OF APPEALS' DECISION TO PROHIBIT THE TRUSTEES FROM APPLYING THE EXPRESS TERMS OF THE PLAN DOCUMENT VIOLATES SECTIONS 402 AND 404(a)(1)(D) OF ERISA, AND CONFLICTS WITH DECISIONS OF OTHER COURTS OF APPEALS.

The Court of Appeals decided to enjoin the Trustees of the 1974 Benefit Plan from applying the "literal terms" of the Plan. This, the court announced, ". . . can only further the

purposes for which the trust fund was created." This remarkable conclusion conflicts with the express requirements of two distinct provisions of ERISA and with decisions of other Courts of Appeals. As such, the decision presents an important question of federal law which has not been, but should be, reviewed by the Court.

Section 402 of ERISA provides in relevant part that:

> (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument.
>
> * * *
>
> (b) Every employee benefit plan shall—
>
> * * *
>
> (4) specify the basis on which payments are made to and from the plan.

29 U.S.C. § 1102(a)(1) and (b)(4).

These requirements amplify and strengthen similar directives that pre-date ERISA. *See* section 302(c)(5)(B) of the Labor-Management Relations Act, 1947 ("LMRA"), 29 U.S.C. § 186(c)(5)(B), and section 401 of the Internal Revenue Code of 1954 ("Code"), 26 U.S.C. § 401, as interpreted in Treas. Reg. § 1.401-1(a)(2)(1956).[3]

The importance of the written instrument requirement is made plain by ERISA's fiduciary duty section:

> Subject to section 403(c) and (d), 4042 and 4044, *a fiduciary shall discharge his duties* with respect to a plan solely in the interest of the participants and beneficiaries and—
>
> * * *

[3] Congress' concern in this regard was particularly great for collectively bargained employee benefit plans. One of the purposes of enacting the "written agreement" requirement in section 302(c)(5)(B) of the LMRA, 29 U.S.C. § 186(c)(5)(B), was to correct abuses of welfare funds "controlled by union leaders under such loose standards that they are free to give or withhold benefits at their pleasure." 93 Cong. Rec. A-2252 (1947) (remarks of Senator Ball). *See Arroyo v. United States*, 359 U.S. 419, 425-26 (1959); *Robinson*, 455 U.S. at 570-73.

> (D) *in accordance with the documents and instruments governing the plan* insofar as such documents and instruments are consistent with the provisions of this title or title IV.

ERISA section 404(a)(1)(D); 29 U.S.C. § 1104(a)(1)(D) (emphasis added).

The Court has recognized that section 404's enumeration of fiduciary duties is a codification of well-established traditional trust law principles. *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329-34 (1981); *Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.*, 472 U.S. 559, 570 n.10 (1985). Thus, Section 402's requirement of a written instrument specifying the basis on which payments are to be made, and section 404's corresponding fiduciary duty to administer the plan in accordance with its governing documents, are simply restatements of fundamental principles. Indeed, as the Fourth Circuit itself has recognized,

> There is no firmer principle in the common law of trusts than that requiring the trustees to act only in accordance with the terms of the trust.

Sinai Hospital v. National Benefit Fund for Hospital & Health Care Employees, 697 F.2d 562, 566 (4th Cir. 1982).

It is readily apparent that one of the functions of these related requirements is to allow plan fiduciaries to fulfill their ". . . duty of determining who is in fact a plan participant." *Central Transport, Inc.*, 472 U.S. at 572 (footnote omitted). It is equally apparent that in performing this duty, the trustees are constrained to abide by the written directives adopted by the settlors of the trust specifying the persons entitled to benefits. G. BOGERT & G. BOGERT, *Law of Trusts and Trustees*, § 814, page 315 & n.7 (2d rev. ed. 1980) ("A trustee is under an absolute duty to distribute the trust property according to the terms of the trust, and is liable for any improper distribution, no matter what his good faith was.")

The Court of Appeals ignored these fundamental dictates of ERISA, the LMRA, and trust law, and announced that it would not permit ". . . strict adherence to the literal terms in the agreement." A. 6a-7a. Instead, speculating that in writing the document, the parties "simply did not consider" that the "patent limitation" of liability would in fact exclude some pensioners from benefits under the 1974 Benefit Plan, the panel decided to reformulate the document to accord with the panel's own notion of what the parties should have written.

The panel's approach eliminates ERISA's written instrument requirement as a governing principle applicable to employee benefit plans. Further, it nullifies any effective enforcement of a fiduciary's obligation to administer a plan in accordance with its written terms. Under the panel's decision, it is apparent that a plan fiduciary who has a plausible basis to believe that an explicit plan provision is contrary to the settlors' "true intent" is free to disregard his written instructions and grant or deny benefits consistent with his own appraisal of what was intended, but not written. There can be no doubt that, in enacting the specific requirements of ERISA, Congress intended otherwise.

Several Courts of Appeals have recognized as much. For example, in *Cummings by Techmeier v. Briggs & Stratton Retirement Plan*, 797 F.2d 383 (7th Cir.), *cert. denied*, 107 S.Ct. 648 (1986), the Seventh Circuit reviewed a lower court decision imposing a constructive trust on pension plan assets in favor of a deceased plan participant's potential beneficiary. The decedent had contracted to name his minor daughter as the beneficiary of death benefits under his pension plan. He failed to do so before his death. The plan document plainly required the submission of a written designation to the plan fiduciary as a condition to the payment of benefits. The lower court reasoned that under the "unusual circumstances" of the case, the plan fiduciaries should be compelled to pay the benefit to the intended beneficiary, notwithstanding the plain terms of the plan. *Id.* at 388.

The Court of Appeals reversed, relying on section 402(a)(1) and 404(a)(1)(D) of ERISA. *Id.* at 387. In the court's words,

"[t]he defendants had clearly complied with both the written terms of the Plan and their fiduciary duties. That should have ended the matter." *Id.* at 388. The court went on to explain the policy considerations underlying ERISA's written instrument requirement:

> The funding for the Briggs & Stratton Plan, like any pension plan's funding, depends on stability and predictability. Sound administration of a pension plan demands advance planning. Forcing trustees of a plan to pay benefits which are not part of the written terms of the program disrupts the actuarial balance of the Plan and potentially jeopardizes the pension rights of others legitimately entitled to receive them. As the Eighth Circuit has emphasized in *Phillips v. Kennedy*, 542 F.2d 52, 55 n.8 (8th Cir. 1976), there is danger when courts tamper with the written terms of a pension plan . . . .

Id. at 389 (quotation from *Phillips v. Kennedy* omitted).

The Eleventh Circuit agrees. In *Nachwalter v. Christie*, 805 F.2d 956 (11th Cir. 1986), the court affirmed a ruling that a purported oral modification of a written plan provision is invalid.

> ERISA expressly requires that employee benefit plans be "established and maintained pursuant to a written instrument." 29 U.S.C. § 1102(a)(1). We agree with the district court that this requirement that ERISA plans be "maintained" in writing precludes oral modifications of the Plans. . . .

Id. at 960

Like the Seventh Circuit, the court in *Nachwalter* recognized that ERISA's written instrument requirement is fundamental to the scheme of the statute.

> A central policy goal of ERISA . . . would be undermined if we permitted oral modifications of ERISA plans because employees would be unable to rely on these plans if their expected retirement

> benefits could be radically affected by funds dispersed to the employees pursuant to oral agreements.

Id. at 960; *see Pompano v. Michael Schiavone & Sons, Inc.*, 680 F.2d 911, 914 (2d Cir.), *cert. denied*, 459 U.S. 1039 (1982).

The Ninth Circuit reached a similar conclusion under the LMRA.

> [a] tacit understanding between [the employer] and the union that conflicts with or alters the meaning of the written agreement should not be considered. . . . A contrary rule would invite "collusion and controversy to the detriment of the employee beneficiaries."

Northwest Administrators, Inc. v. B.V. & B.R., Inc., 813 F.2d 223, 226-27 (9th Cir. 1987) (citations omitted). *See also District 2, UMWA v. Helen Mining Co.*, 762 F.2d 1155, 1160 (3d Cir. 1985) (court should not interfere ". . . when the trustees have . . . literally followed an unambiguous benefit eligibility requirement that was bargained for and . . . set forth in an employee benefit plan . . .")

The Fourth Circuit overlooked this substantial authority and expressly decided to depart from the plain terms of the Plan document. By doing so, the Court undermines "[a] central policy goal of ERISA . . .". *Nachwalter v. Christie*, 805 F.2d at 960. Indeed, its decision threatens the "actuarial balance" of this Plan and all others, and "potentially jeopardizes the . . . rights of [those] legitimately entitled to receive [benefits]." *Cummings by Techmeier*, 797 F.2d at 389.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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JANUARY 1988

87-1185

No.

Supreme Court, U.S.
FILED
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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Petitioner

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; HERSCHEL HENSON

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Petitioner

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821; LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HANSHEW, DISABLED RETIREE; JOHN DOE; MARY DOE

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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INDEX

Page

1. Opinion of the United States Court of Appeals for the Fourth Circuit in *District 29, United Mine Workers of America; Herschel Henson v. United Mine Workers of America 1974 Benefit Plan and Trust*, No. 86-3709(L) (4th Cir. August 13, 1987) and *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust*, No. 87-3018 (4th Cir. August 13, 1987) 1a

2. Judgment of the United States District Court for the Southern District of West Virginia in *District 29, United Mine Workers of America, et al. v. Royal Coal Company and United Mine Workers of America 1974 Benefit Plan and Trust, et al.*, Civil Action No. 5: 85-0292 (S.D. W.Va. January 5, 1987)..... 9a

3. Memorandum Opinion of the United States District Court for the Southern District of West Virginia in *District 29, United Mine Workers of America, et al. v. Royal Coal Company and United Mine Workers of America 1974 Benefit Plan and Trust, et al.*, Civil Action No. 5: 85-0292 (S.D. W.Va. January 5, 1987)..... 11a

4. Judgment of the United States District Court for the Southern District of West Virginia in *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust, et al.*, Civil Action No. 5: 86-0430 (S.D. W.Va. July 10, 1986)..... 30a

5. Memorandum Opinion of the United States District Court for the Southern District of West Virginia in *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust, et al.*, Civil Action No. 5: 85-0430 (S.D. W.Va. July 10, 1986) 32a

Page

6. Order of the United States Court of Appeals for the Fourth Circuit denying Petition of Appellants for Rehearing and Suggestion for Rehearing In Banc, Nos. 86-3709 (L) and 87-3018 (4th Cir. October 16, 1987). 40a

7. Opinion of the United States Court of Appeals for the Fourth Circuit in *District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985)..... 42a

8. United Mine Workers of America 1974 Benefit Plan and Trust, effective June 7, 1981, pages 3 to 4; 8 to 8a..... 50a

9. United Mine Workers of America 1974 Benefit Plan and Trust, effective October 1, 1984, pages 74 BPT.2 to 74 BPT.3; 74 BPT.7 to 74 BPT.8 ..... 53a

10. National Bituminous Coal Wage Agreement of 1978, pages 14 to 16; 18; 19 ..... 57a

11. National Bituminous Coal Wage Agreement of 1981, pages 14 to 15; 17; 18..... 71a

12. National Bituminous Coal Wage Agreement of 1984, pages 14 to 15; 16 to 17; 18..... 84a

13. United Mine Workers Proposal, August __ , 1984 ..... 98a

14. Statutes Involved

Section 8(d) of the National Labor Relations Act, 1947, 29 U.S.C. § 158(d) 102a

Section 402 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1102 104a

Section 404 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1104 105a

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 86-3709(L)

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; HERSCHEL HENSON,
Plaintiff—Appellee,

v.

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST;
Defendant—Appellant,

THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.,
Amicus Curiae

and

MANLO MINING CO., A DOMESTIC CORP., GOPHER MINING CO., A FOREIGN CORPORATION
Defendant.

No. 87-3018

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821; LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HANSHEW, DISABLED RETIREE; JOHN DOE; MARY DOE,
Plaintiff—Appellee,

v.

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Defendant—Appellant,

and

ROYAL COAL COMPANY,
Defendant.

THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.,
Amicus Curiae

Appeal from the United States District Court for the Southern District of West Virginia, at Beckley. Dennis Raymond Knapp, Senior District Judge. (CA-5:86-430 and CA-85-292).

Argued: June 2, 1987 **Decided:** August 13, 1987

Before CHAPMAN, Circuit Judge, BRITT, U.S. District Judge for the Eastern District of North Carolina, and MacKENZIE, Senior U.S. District Judge for the Eastern District of Virginia, sitting by designation.

William Francis Hanrahan (Arent, Fox, Kintner, Plotkin & Kahn; Gerald E. Cole, Jr., General Counsel, United Mine Workers of America Health & Retirement Funds; Carolyn Mensi Petralia, Senior Associate Counsel on brief) for Appellants; Bradley James Pyles (Grant Crandall; Charles F. Donnelly; Crandall & Pyles; Michael H. Holland, General Counsel, Deborah Stern, United Mine Workers of America on brief) for Appellees; (Charles P. O'Connor; Margery Sinder Friedman; Morgan Lewis & Bockius on brief) for Amicus Curiae Bituminous Coal Operators' Association, Inc.

CHAPMAN, Circuit Judge:

The complicated health benefit plan for retirees and their widows existing in the coal industry is again before the court.[1] The health benefit plan protecting coal industry workers requires individual employers to provide retirement health benefits, with the "1974 Benefit Plan and Trust," an industry-

wide trust fund, to assume liability for these benefits when the worker's individual employer or its successor is no longer in business, as defined under the pertinent bargaining agreement. The difficult question presented in this appeal is, where the former employer remains "in business," as defined in the wage agreement, but is no longer legally liable to provide health benefits, must the 1974 Benefit Plan and Trust assume liability. Based on our reading of the terms of the agreements, and the intentions of the parties made manifest in entering those agreements, we affirm the district court's decision that the 1974 Benefit Plan and Trust must assume liability.

I

This appeal is a consolidation of two cases where the 1974 Benefit Plan and Trust refused to provide health benefits to pensioners. In one case,[2] the district court after conducting hearings issued a preliminary injunction against the 1974 Benefit Plan to prevent it from refusing to provide health benefits. In the other case,[3] the district court permanently enjoined the 1974 Benefit Plan from refusing to provide health and other non-pension benefits.

Prior to 1978, the 1974 Benefit Plan and Trust and its antecedent, created in 1950, were the sole means by which pensioners were provided with health benefits. Each mining company would contribute money, based upon its coal production, to the fund. The Bituminous Coal Operators Association (BCOA), a large group of coal producers, became worried that some of the smaller coal producers were manip-

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[1] See, *District 17, District 29, Local Union 7113 and Local Union 6023, United Mine Workers of America v. Allied Corporation*, 765 F.2d 412 (4th Cir. 1985)(en banc), and *District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985).

[2] *District 29, United Mine Workers of America, and Herschel Henson v. The United Mine Workers of America 1974 Benefit Plan and Trust, Manlo Mining Co., and Gopher Mining Co.*, No. 5:86-0430 (S.D.W.V. July 10, 1986).

[3] *District 29, United Mine Workers of America, et al., v. Royal Coal Company and The United Mine Workers of America 1974 Benefit Plan and Trust*, No. 5:85-0292 (S.D.W.V. Jan. 5, 1987).

ulating their corporate structures and using the bankruptcy laws to evade their obligations to contribute to the 1974 Plan. Thus during negotiations for the 1978 wage agreement, the BCOA proposed that the 1974 Benefit Plan and Trust be eliminated, and that individual employers create individual means by which to supply retirement health benefits. The union demurred. The eventual compromise reached was that individual operators would have primary responsibility to provide retirement health benefits through private insurance carriers, but that the 1974 Benefit Plan would continue in existence in order to provide such benefits for "orphaned" workers: workers whose former employer or its corporate successor was no longer in business. The specific language in the collective bargaining agreement which provides that the 1974 Benefit Plan and Trust will be utilized only where a retiree's former employer is no longer in business reads as follows:

> The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:
>
> > (a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

> (b) is financially unable (through the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or a parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

Article XX(c)(3)(ii) of the 1981 and 1984 collective bargaining agreements.

Despite the patent limitation of the liability of the 1974 Benefit Plan and Trust to provide health benefits only "during the terms of this agreement," and only where the individual employer is "no longer in business," the general description to each of the many two-year collective bargaining agreements states that pensioners who retire before the effective date of each collective bargaining agreement are entitled to health benefits "for life" and their widows "until death or remarriage." The plaintiffs in these cases retired between 1976 and 1984, thus prior to the effective date of the 1984 collective bargaining agreement, which agreement contains in its general description the aforementioned language. These retirees' former employers, however, and their corporate successors are not signatories to the relevant wage agreements, and therefore these individual employers and their successors are no longer liable to provide health benefits. *See District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985). The corporate parent-successors of the individual employers, although not legally liable to pay health benefits, are apparently not "financially unable" to do so, and thus the literal provisions triggering the liability of the 1974 Benefit Plan and Trust only where the former employer or its successor is no longer in business are not satisfied. In other words, a former employer or its successor must have ceased all mining operation and be financially unable to provide benefits before it is deemed "no longer in business."

Thus the issue presented is whether the 1974 Benefit Plan must provide health benefits where the successor corporation of the former employer is financially able to provide benefits, but is not legally obligated to do so because it is not a signatory to the wage agreement. The district court held that the 1974 Benefit Fund must provide health benefits where the retiree's "last signatory employer is no longer able *or* required to provide such benefits." (Emphasis added.)

II

At the outset of our analysis we note that we agree with the district court's conclusion that the intentions of the parties in providing for retirement health benefits was to guarantee their provision for life. It is apparent from the record that the parties, in moving from a system wherein the health benefits were provided solely by the collective 1974 trust to a regime in which individual employers assumed primary liability, intended to change the method of providing health benefits, but they did not intend to create new, latent loopholes to coverage. The district court found that under the collective bargaining agreements and the 1974 trust, a retiring miner had been guaranteed benefits for life, and that the 1978 alterations in the procedures of providing these benefits did not alter that intention. We will not disturb the district court's findings and conclusions, which rely on the evidence and oral testimony submitted as an aid to construction of the contradictory language in the agreements.

The question remains, given the intention of the parties to provide lifetime benefits, whether the 1974 Benefit Plan and Trust must assume the burden of providing those benefits. It is clear that neither the former employer nor its corporate successor is legally liable for providing these health benefits. *See Royal*, *supra*. To construe the contract to create no liability on the part of the 1974 Benefit Plan would have the effect of defeating the expressed intention to provide lifetime benefits.

Given this intention of the parties, we will not permit the 1974 Benefit Plan and Trust to escape liability by its strict

adherence to the literal terms in the agreement. From its beginning this trust was intended as the safety net for "orphaned" retired miners. It is likely that the parties in negotiating the provision of lifetime health benefits simply did not consider, prior to our decision in *Royal*, that a former employer or its successor could remain financially able to pay benefits (and therefore "in business"), and yet not be legally obligated to do so. It is clear that the parties believed they were establishing a seamless garment in the contract by providing for liability on behalf of individual employers as long as they remained in business, and liability on behalf of the 1974 Benefit Plan when those employers ceased being in business. But because of the manner in which "in business" has been defined by the parties, the unforeseen separation of financial ability and legal obligation has given rise to a tear in the garment. The 1974 Benefit Plan and Trust was established and continued in order to supply the health benefit needs of "orphaned" retirees, and thus construing the contract to impose that obligation on the trust fund, when the legal obligations of the former employer has terminated, can only further the purposes for which the trust fund was created.

We therefore affirm the district court's result based upon our interpretation of the labor agreements. We do not reach the issues decided by the district court under the Employee Retirement Income Security Act.

The appellants in *District 29, United Mine Workers of America, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust and Royal Coal Company*, No. 87-3018, argue that the district court erred in its order requiring the 1974 Benefit Plan to reimburse the plaintiffs for all covered medical expenses incurred by Royal Coal Company pursuant to the preliminary injunction. The appellants argue that this order is ambiguous, as it might be read to require the plan to reimburse the plaintiffs for the attorneys' fees and disbursements that the plaintiffs were ordered to pay to Royal, in contradiction to Fed. R. Civ. P. 65(c). The appellants do not dispute the requirement that the plan reimburse plaintiffs for $4,310.71 in medical expenses paid by Royal.

Because the district court's order is ambiguous on the issue of reimbursement of attorneys' fee, we conclude that this issue can best be clarified by the district court and we remand this issue to the district court for such purpose. The judgment of the district court is

AFFIRMED IN PART
AND REMANDED.

United States District Court

SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

Civil Action No. 5:85-0292

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 6064, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HENSHAW, DISABLED RETIREE; AND JOHN DOE AND MARY DOE,

Plaintiffs,

v.

ROYAL COAL COMPANY AND THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Defendants.

JUDGMENT ORDER

For the reasons stated in the Court's Memorandum Opinion of even date herewith, which Memorandum Opinion is ORDERED filed and made a part of the record in this action, it is hereby ORDERED as follows:

1. That judgment be entered herein in favor of the plaintiffs against the United Mine Workers of America 1974 Benefit Plan and Trust, its agents, employees, and all persons acting on its behalf, and said defendants be permanently restrained and enjoined from refusing or failing to provide the health care coverage, as such coverage is specified in the 1981 and 1984 wage agreements of the United Mine Workers of America 1974 Benefit Plan and Trust, for all eligible

pensioners under the UMWA 1974 Benefit Plan, whose last classified employment was with Royal Coal Company, as well as their surviving spouses and eligible dependents;

2. That the 1974 Benefit Plan and Trust reimburse the plaintiffs for all covered medical expenses incurred since October 1, 1984, including all expenses incurred by Royal Coal Company pursuant to the preliminary injunction heretofore entered against it;

3. That Royal Coal Company be dismissed as a defendant in this action; and

4. That this action be dismissed and stricken from the docket of this court.

The Clerk is directed to mail certified copies of this Judgment Order and of the Court's Memorandum Opinion to all counsel of record herein.

DATED: January 5, 1987

/s/_____
DENNIS R. KNAPP, JUDGE

United States District Court

SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

Civil Action No. 5:85-0292

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 6064, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HENSHAW, DISABLED RETIREE; AND JOHN DOE AND MARY DOE,
Plaintiffs,

v.

ROYAL COAL COMPANY AND THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,
Defendants.

MEMORANDUM OPINION

Plaintiffs filed this action on March 8, 1985, pursuant to the provisions of Section 301 of the Labor Management Relations Act of 1947 (LMRA) and Section 502 of the Employee Retirement Income Security Act (ERISA), asserting that either defendant Royal Coal Company (Royal) or the United Mine Workers of America 1974 Benefit Plan and Trust (1974 Benefit Plan and Trust) is responsible for providing health benefits to the individual plaintiffs involved herein. On April 23, 1985, this Court entered a preliminary injunction enjoining Royal and all other persons acting on its behalf from failing to provide health benefits and life insurance under Article XX of the National Bituminous Coal Wage Agreement

(Wage Agreement) for the individual plaintiff-employees and others similarly situated pending resolution of this matter. Subsequently, the Fourth Circuit Court of Appeals on appeal from said order held that Royal's obligation to provide its former employees with health benefits terminated upon the expiration of the 1981 Wage Agreement. Since Royal was not signatory to the successor contract, the 1984 Wage Agreement, the appellate court accordingly vacated and remanded this case to the district court for further proceedings. Following a hearing on August 13, 1985, this Court issued a preliminary injunction enjoining and restraining the 1974 Benefit Plan and Trust from failing to provide said benefits to Royal's former employees and their dependents.

On July 9, 1986, the Court conducted further proceedings on the merits of this matter, and having carefully considered the entire record in this matter, including the argument of counsel, the Court herein makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiffs District 29, Local Union 5821, and Local Union 6064, UMWA, are each labor organizations within the meaning of §2(5) of the LMRA, 29 U.S.C. §152(5), and represent the former employees of Defendant Royal.

2. Plaintiff Garland Walkup resides in Rupert, West Virginia, and was, until retiring in November 1977, a classified union employee of Royal. Since that time he has been receiving a regular UMWA retirement pension from the 1974 Benefit Plan and Trust.

3. Plaintiff Madeline R. Thomas is the widow of Joe Thomas, who died on January 29, 1982, and who, until retiring on a UMWA pension on April 18, 1980, was a classified union employee of Royal. Since February 1982 Madeline R. Thomas has been receiving a UMWA widow's pension from the 1974 Benefit Plan and Trust.

4. Plaintiff Joseph Hanshaw is a resident of Lansing, West Virginia, and was a classified union employee of Royal

until becoming disabled and retiring in September 1977. Since on or about December 1979 he has been receiving a UMWA disability pension from the 1974 Benefit Plan and Trust.

5. Plaintiffs John and Mary Doe are all those persons similarly situated with the named individual plaintiffs as former employees of Royal and whose claims are representative of a group of approximately 78 retired and disabled coal miners, or their widows, whose last signatory employer was Royal. All of the group members retired prior to October 1, 1984, the expiration date of the 1981 Wage Agreement, and the majority retired prior to June 5, 1981, the effective date of the 1981 Wage Agreement.

6. Defendant 1974 Benefit Plan and Trust is an employee benefit plan within the meaning of Section 3(3) of ERISA. 29 U.S.C. §1002(3). The 1974 Benefit Plan and Trust was established on December 6, 1974 through collective bargaining between the International Union, UMWA, and the Bituminous Coal Operators Association, Inc. (BCOA) as part of the 1974 Wage Agreement. The 1974 Benefit Plan and Trust was amended and continued in existence by the collective bargaining parties as part of the 1978, 1981 and 1984 wage agreements.

7. Defendant Royal is a West Virginia corporation engaged in commerce within the meaning of §2(2) and 2(7) of the LMRA, 29 U.S.C. §152(2) and 152(7), at all times relevant hereto.

8. Defendant Royal was signatory to and bound by the 1968, 1971, 1974, 1978, and 1981 wage agreements. The 1981 Wage Agreement became effective on June 7, 1981 and expired on September 30, 1984.

9. Pursuant to the 1978 and 1981 wage agreements, Royal provided health and other non-pension benefits to its active and retired employees, including the individual plaintiffs, through an individual employer benefit plan, pursuant to the terms of Article XX(c)(3) ("Health and Retirement Benefits—1974 Plans and Trust") of those wage agreements.

10. Royal has ceased mining coal and has not become signatory to the successor wage agreement of the 1981 Wage Agreement, the 1984 Wage Agreement. Royal maintained an individual employer plan, pursuant to the terms of Article XX of the NBCWA, which provided health and other non-pension benefits to its retirees and disabled employees/pensioners during the term of the 1981 Wage Agreement. Upon the termination of the 1981 Wage Agreement on September 30, 1984, Royal ceased providing said benefit coverage to its retirees and disabled employees and other eligible beneficiaries.

11. Prior to the 1974 Wage Agreement, from 1950 to 1974, the UMWA Welfare and Retirement Fund provided pension and health benefits to those persons eligible from a single trust fund established by the UMWA and the BCOA.

12. Under the UMWA Welfare and Retirement Fund, a board of three trustees established the eligibility requirements and the level of benefits to be paid with respect to both pension and health benefits.

13. Between 1946 and 1974 the trustees of the Fund established various pension, health, and welfare benefits through the adoption of formal resolutions. By resolution UMWA members entitled to receive health benefits from the Fund included miners who were "receiving a retirement pension from the Fund and not employed outside the coal industry." By various resolutions the trustees extended health benefits to additional classes of beneficiaries, including miners' dependent children, widows of miners killed in mine accidents, and disabled miners.

14. Although the trustees of the UMWA Welfare and Retirement Fund could, in their discretion, establish eligibility requirements and the level of benefits to be paid to eligible beneficiaries, the health benefits provided to retired mine workers were never decreased or eliminated, and retirees were entitled under the Welfare and Retirement Fund to receive health benefits concurrent with pension benefits, that is, they were entitled to receive health benefits for life. The health benefits were provided by the trust fund

and did not terminate at the end of a particular bargaining agreement.

15. In 1974 the UMWA and the BCOA agreed, in contract negotiations, to continue the UMWA Welfare and Retirement Fund in the form of four new plans and trust, namely, the 1950 Pension Plan and Trust, the 1950 Benefit Plan and Trust, the 1974 Pension Plan and Trust and the 1974 Benefit Plan and Trust. The 1950 Pension Plan and Trust and the 1950 Benefits Plan and Trust continued to provide pension and health benefits to retirees, disabled employees and other pensioners and beneficiaries who had retired or otherwise had become eligible for benefits prior to January 1, 1976. Under the terms of the 1974 Wage Agreement, a 1950 pensioner was entitled to "retain his health services card until death, and upon his death, his widow was to retain a health services card until her death or remarriage."

16. Under the terms of the 1974 Wage Agreement miners who retired after January 1, 1976 were entitled to receive pensions and health benefits under the 1974 Pension Plan and Trust and the 1974 Benefit Plan and Trust, respectively. Like the 1950 pensioners, the 1974 pensioners were also carried over into the existing health and medical programs administered by the health and retirement funds. Upon a 1974 pensioner's death, his widow was entitled, under the terms of the wage agreement, to retain his health services card until her death or remarriage. Additionally, disabled and retarded children of holders of health services cards were covered so long as a surviving parent held a card.

17. Each of the four pension and benefit plans and trusts established under the 1974 Wage Agreement was defined and described in the collective bargaining agreement itself, in an article of the contract entitled "Summary of Principal Provisions, UMW Health and Retirement Benefits." The contract thus explicitly provided that a retired miner under both the 1950 Pension Plan and Trust and the 1974 Pension Plan and Trust would retain a health services card "until death," that his widow would retain the health services card "until her death or remarriage," and that disabled miners would retain

the health services card "for life." The 1978, 1981, and 1984 wage agreements, the successor agreements to the 1974 Wage Agreement, included a similar summary of benefits. The eligibility requirements for health benefits set forth in the 1974 Wage Agreement were repeated in virtually identical language in the 1978, 1981, and 1984 wage agreements.

18. In 1977 the various retirement and welfare funds experienced severe financial difficulties by reason of a decline in royalty payments. Accordingly, the trustees instituted a system of copayments for health benefits through the remaining term of the 1974 Wage Agreement.

19. During negotiations for the 1978 Wage Agreement, the BCOA proposed eliminating the 1974 Benefit Plan and Trust and replacing it with individual employer plans. However, the UMWA rejected the plan and as finally negotiated and approved, the 1978 Wage Agreement provided, in pertinent part:

> Article XX(c)(iii): The 1974 Benefit Plan and Trust shall continue after May 31, 1978, for the sole purpose of providing health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) from which he retired is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last classified employment was with a signatory Employer which is no longer in business.

20. The "no longer in business" language in the 1978 and 1981 wage agreements and the trust documents is ambiguous and requires interpretation. Notwithstanding the defendant 1974 Benefit Plan and Trust's contention that the "no longer in business" language is unambiguous on its face, the provision of a health services card for life to pensioners who retire

under each and every prior wage agreement to the successor wage agreement indicates that a pensioner cannot be divested of health benefits. Indeed, the Trustees themselves, in directing that the Funds' office of the General Counsel prepare a memorandum and a "Q and A" to define the "no longer in business" language, have indicated that they have found the language ambiguous and in need of interpretation.

21. Around 1980 an increasing number of signatory employers ceased their coal mining operations as economic conditions in the coal fields worsened. As a result laid-off miners whose employers had gone out of business or had insufficient assets to pay health benefits found themselves without health coverage. Therefore, in 1980 the UMWA and the BCOA entered into an agreement to appropriate a separate fund to provide extended health coverage to these laid-off miners. As a result a "$2 Million Fund" was established. During the negotiations to formalize the "Fund," the BCOA voiced its concern to then-UMWA International President Sam Church that the "no longer in business" definition utilized by the Trustees was susceptible to manipulations by employers who took advantage of the "Q and A H-16" definition to shirk their responsibility to their pensioners.

22. The UMWA readily agreed to change the "no longer in business" language to assure that an employer could not shift its liability for pensioner health benefits to the Benefit Plan through a scheme of corporate manipulation. Accordingly, the "$2 Million Fund" amended the "no longer in business" language to define an employer as no longer in business if it were "financially unable (through either the business entity that has ceased operation . . . including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether it is covered by the 1978 wage agreement or not) to provide health and other non-pension benefits to its non-retired, laid-off miners, as required by Article XX of the 1978 Wage Agreement." The new "no longer in business" language, contained in the "Memorandum of Understanding," dated February 27, 1980, was considered reasonable and noncontroversial by both parties.

23. Neither the 1978 nor 1981 wage agreements, the trust documents incorporated therein, nor the bargaining history presented to the Court at trial, evidence an intent by the parties to reduce the level of benefits, to exclude or eliminate certain categories of beneficiaries from benefits, to cause the forfeiture or loss of benefits upon the occurrence of certain contingencies or to change the nature of the benefits provided.

24. The evidence clearly shows that in establishing individual employer benefit plans and in retaining the 1974 Benefit Plan for "orphaned" pensioners, the parties intended to assure the financial soundness of the health benefit scheme for the beneficiaries. It is apparent from the evidence that the parties intended to change the method of providing those benefits, but never intended to change the expectancy of the pensioners to receive those benefits. The evidence, which the Court finds credible, particularly that of Sam Church, former International President, establishes that health benefits for pensioners were to be continued either from the employer or successor or from the trust.

25. The intent of the UMWA and the BCOA to provide continuing health and other benefits to pensioners and their widows running concurrent with their pensions is clearly evidenced by the language of each of the wage agreements. The UMWA and the BCOA agreed in negotiations for the 1978, 1981, and 1984 wage agreements to provide a health services card for life to pensioners who retired prior to the date of each of those agreements. Each of those wage agreements repeats essentially the same language in each of the various categories of eligible beneficiaries under Article XX.

26. The trustees adopted "Q and A H-16" which provided that the 1974 Benefit Plan and Trust would assume responsibility for providing health benefits to pensioners if the last signatory employer was no longer engaged in the coal business, and had no successor that would be liable for those benefits. "Q and A H-16" provided the Trustees with guidance in making "no longer in business" determinations during the term of the 1978 Wage Agreement.

27. Based upon the two cents per man hour royalty negotiated by the parties under the 1978 Wage Agreement on behalf of the 1974 Benefit Plan and Trust, said Trust accumulated approximately $35 million during the term of the contract. In 1981 and again in 1984 the parties were able to reduce the royalty to the 1974 Benefit Plan and Trust to zero cents per man hour because the Trust had accumulated funds during the 1978 Wage Agreement sufficient to pay the benefits of the current beneficiaries of the Trust.

28. Article XX(c) (3) (ii) of the 1981 Wage Agreement provided that the 1974 Benefit Plan and Trust would provide benefits to retired miners

> "who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory employer (including successors and assigns) for whom such miner last worked in signatory, classified employment, is no longer in business. . . . For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an employer is considered to be no longer in business only if the employer: (a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and (b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors and assigns, if any, and any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses."

29. Royal ceased providing benefits to the individual plaintiffs upon the expiration of the 1981 Wage Agreement on September 30, 1984. The estimated cost of continuing to provide those benefits after September 30, 1984, was approximately $38,000 per month. Royal does not have the assets to provide such benefits.

30. Since at least April 1978, all or a majority of the stock of Royal has been owned by another corporation. Since January 29, 1983, 83% of the issued and outstanding shares of Royal have been owned by American Hawaiian Steamship Company (American Hawaiian), a corporation. American Hawaiian is financially able to provide benefits to Royal's pensioners and their dependents, although it has never been a signatory to a wage agreement.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter pursuant to Section 301 of the LMRA of 1947, 29 U.S.C. §185, and §502 of ERISA of 1974, 29 U.S.C. §1132.

2. Although ERISA does not impose any minimum vesting requirements with respect to the employee welfare benefits plans, the statute evidences no intent by Congress to endorse unfettered termination of benefits such as those provided by the UMWA 1974 Benefit Plan and Trust. Whether pensioners are entitled to health and other non-pension benefits as a vested, lifetime benefit which is not limited to the duration of a particular collective bargaining agreement depends upon the intent of the parties. *District 29, UMWA v. Royal Coal Company*, 768 F.2d 588 (4th Cir. 1985); *International Union, United Automobile, Aerospace and Agricultural Implement Workers v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983); *Bower v. Bunker Hill Co.*, 725 F.2d 1221 (9th Cir. 1984); *Upholsterer's International Union v. American Pad and Textile Co.*, 372 F.2d 427 (6th Cir. 1967).

3. The language of the collective bargaining agreement viewed in the light of the relative position of the parties and the clear purposes sought by them manifest a clear intention to provide health benefits for pensioners and their widows. Traditional rules of contract interpretation are to be applied as long as their application is consistent with federal labor law. The Court will look initially to the language of the collective bargaining agreement for clear manifestations of intent. However, the intended meaning of even the most

explicit language must be viewed in light of the context and other indicia of intent which gave rise to its inclusion. Accordingly, the Court will interpret the particular provision in question as part of the integrated whole and attempt to construe its language consistent with the entire document and the relative positions and purposes of the parties. The terms of a collective bargaining agreement should be construed so as to render none nugatory and to avoid illusory promises. Variations in language used in other durational provisions of the agreements may provide inferences of intent useful in clarifying a provision whose intended duration is ambiguous. See, *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Yard-Man, Inc.*, supra, at 1480, and case cited therein.

4. The 1974, 1978, 1981, and 1984 wage agreements provide, in Article XX, a "Summary" or "General Description of the Health and Retirement Benefits," with respect to different classes of pensioners, that

> (s)uch pensioner will be entitled to retain a health services card for life. Upon his death, his widow will retain a health services card until her death or remarriage, subject to the $500 earnings limit.

The clear language thereof expresses the intent of the parties to provide the retired mine worker with health benefits as a vested lifetime benefit, as had been the retired miner's entitlement under the UMWA Welfare and Retirement Plan since at least the 1950's.

5. To alter the nature of a pension-related benefit which has been a lifetime benefit for more than 25 years to one that exists only during the term of the collective bargaining agreement, as defendant 1974 Benefit Plan and Trust contends, requires some affirmative indication that such is the intent of the parties to the collective bargaining process. Nothing in the collective bargaining agreements or plan documents indicates any intention on the part of the parties to effect such a major change in the expectancy of benefits. On the contrary, the Court finds that the wage agreement, the plan documents, and the bargaining history presented by

both the Union and the Benefit Plan evidences that the parties did not intend to change the expectancy of pensioners to health benefits which are provided concurrent with their pensions.

6. The parties have clearly bargained in previous contracts for the extension of lifetime benefits to additional beneficiaries. Such benefits were extended to widows in the 1974 Wage Agreement. *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562, 102 S.Ct. 1226, 71 L.Ed.2d 419 (1982).

7. Although a pensioner is entitled to benefits "for life," the 1978 Wage Agreement and successor contracts limited the liability of the employer for pensioners' health and other non-pension benefits to the term of the contract, as expressed in Article XX(h)'s provision that "the Employers agree to fully guarantee the pension and health benefits . . . during the term of this Agreement." If the parties had intended that the individual pensioner's entitlement to benefits (rather than the employer's responsibility to provided said benefits) was one which existed only during the term of the agreement, the Court presumes that the parties had the ability and expertise to draft language so stating. The collective bargaining agreements indicate that the health benefits provided to pensioners are to be lifetime benefits, although the employer's particular liability for providing those benefits is limited to the term of the particular wage agreement.

8. In 1978 the parties retained the 1974 Benefit Plan and Trust for the specific purpose of providing health and other benefits to retired miners who became "orphans" by not being covered under an employer plan. The retention of the 1974 Benefit Plan and Trust to act as a "safety net" for these pensioners further indicates the parties' intent to ensure that the pensioners' historical entitlement to lifetime benefits continued. During negotiations preceding the 1978 Wage Agreement, the BCOA failed in its attempt to eliminate the 1974 Benefit Plan and Trust because of UMWA insistence that the 1974 Plan continue to provide benefits to those orphaned pensioners who might otherwise lose their benefits

as a result of the conversion to individual company plans from the multi-employer plan.

9. The parties intended that an employee's right to lifetime health benefits under the NBCWA vest upon his retirement. As such, each collective bargaining agreement, and the pension and benefit plans incorporated therein, constituted an offer to an employee who was qualified for retirement under that plan that he could accept by retiring during the term of the agreement. Once an employee so accepted, a binding agreement was entered into. The promise of pension or other retiree benefits, including the promise of lifetime health benefits contained in each collective bargaining agreement and the pension and benefit plans incorporated therein, constitutes an offer which upon performance of the required service by the employee becomes a binding obligation. See, *Rochester Corporation v. Rochester*, 450 F.2d 118 (4th Cir. 1971); *Hoefel v. Atlas Tack Corp.*, 581 F.2d 1 (1st Cir. 1978); *In Re Erie Lackawanna Railway Co.*, 548 F.2d 621 (6th Cir. 1977).

10. Retiree benefits are "status" benefits which normally continue as long as the prerequisite status is maintained. Thus, when parties contract for benefits which accrue upon achievement of retiree status, there is an inference that the parties intended those benefits to continue as long as the beneficiary remains a retiree. *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Yard-Man, Inc.*, supra; *Policy v. Powell Pressed Steel*, 770 F.2d 609 (6th Cir. 1985); *Weimer v. Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985).

11. Contracts such as those presented here have their genesis in industrial relationships that encompass factors not born of the moment but crated by economic necessity. This arrangement gives rise to the vested right in the employees covered by the contracts to continue to receive the emoluments of their labor beyond the life of the contracts. *Local 150-A v. Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985).

12. This unique arrangement for the provision of health benefits to retired employees in the coal industry began when in 1950 the parties created a multi-employer benefit plan which provided lifetime health and other benefits to all retired mine workers. In 1978 that multi-employer plan was converted to a system of providing such benefits through single-employer plans, yet retaining a "safety net" in the form of the 1974 Benefit Plan and Trust, to provide benefits to "orphaned" pensioners. The issue concerning the duration of entitlement to benefits of a pensioner must be distinguished from the question of the obligation of the last signatory employer to provide those benefits. Here, the plain language of the wage agreements establish and carry forward the 1974 Benefit Plan and Trust, which has been created by the parties to provide those benefits where there is no longer an employer responsible for doing so, and provide a health service card for life to each group of pensioners in each successive contract. To ignore the clear provision of each wage agreement for this "safety net" would render the purpose of the 1974 Benefit Plan and Trust worthless and the promise of a health services card for life no more than an illusion.

13. Inasmuch as Royal is not signatory to the 1984 Wage Agreement, its obligation to provide benefits to its pensioners terminated with the expiration of the 1981 Wage Agreement on September 30, 1984. *District 29, UMWA v. Royal Coal Company*, supra; *District 17, UMWA v. Allied Corporation*, 765 F.2d 412 (4th Cir. 1985).

14. Although American Hawaiian may be considered a "parent corporation" of Royal by virtue of its ownership of 83% of Royal's stock, any liability which it might have for providing health benefits to pensioners of Royal could only be derivative of the primary liability of Royal under its collective bargaining agreement with the union. Furthermore, there is no evidence that American Hawaiian and Royal share a centralized control of Royal's operation, share common officers or common control of Royal's labor relations, or other factors which might indicate a single employer or alter-ego relationship as those terms are commonly used in the context of labor relations. As Royal is no longer signatory to or bound

by a collective bargaining agreement with the union, the Court can discern no legal theory upon which American Hawaiian can be held liable for the benefits of the individual plaintiffs.

15. ERISA requires the disclosure and reporting to participants and beneficiaries of financial and other information regarding employee benefits plans covered by the Act. 29 U.S.C. §1001(b). That requirement specifically includes the requirement that such disclosures and summary plan descriptions include

> a statement clearly identifying circumstances which may result in . . . loss, forfeiture, or suspension of any benefit that a participant might otherwise reasonably expect the plan to provide on the basis of the [Summary Plan Description's] description of benefits . . . 29 C.F.R. §2520.102–3(1).

In the absence of such disclosure, a fiduciary under ERISA may be precluded from enforcing undisclosed forfeiture provisions. *Zittrouer v. Uarco Inc. Group Benefit Plan*, 582 F. Supp. 1471 (N.D.Ga. 1984); *Genter v. Acme Scale & Supply Co.* 776 F.2d 1180 (3rd Cir. 1985); *Blau v. Del Monte Corp.*, 748 F.2d 1348 (9th Cir. 1985).

16. Nothing in the 1978, 1981, or 1984 wage agreements, the 1974 Benefit Plan and Trust established pursuant to those wage agreements, or the Summary Plan Descriptions indicates to plan beneficiaries that their entitlement to health benefits may be forfeited if their last signatory employer subsequently fails to become signatory to a successor collective bargaining agreement, or that their entitlement to benefits is limited to or exists only for the duration of a particular collective bargaining agreement. On the contrary, the wage agreements repeatedly provide pensioners with a health services card for life, indicating that their continuing entitlement to health benefits from some entity under the contract is assured.

17. The obligations of the defendant 1974 Benefit Plan and Trust must be considered in the light of a unitary

interpretation of the 1974 Benefit Plan and Trust documents and the 1978, 1981, and 1984 wage agreements. The essence of the matter of pensioner benefits flows from a consideration of the contracts, the parties' bargaining history and objectives, and the trust documents in their entirety, rather than from the narrow parsing of the individual phrases. *Line Drivers Local 961 v. W. J. Digby, Inc.*, 341 F.2d 1016, at p. 1019 (10th Cir. 1965). The overwhelming purpose of the retention of the 1974 Benefit Plan and Trust was to ensure continuing uninterrupted coverage of benefits for eligible pensioners and disabled employees, and their dependents, in circumstances where their employer is no longer obligated to provide such benefits.

18. The Trustee of the 1974 Benefit Plan and Trust have a fiduciary duty to administer the trust for the benefit of the intended beneficiaries. They also have a duty to preserve the corpus of the trust, but not at the expense of the beneficiaries. In interpreting the provisions of the trust documents they have an obligation to look to the overall intent of the parties to the wage agreement for guidance in interpreting individual provisions, and to comprehend that terms used in a collective bargaining agreement carry with them certain connotations and understandings common to labor negotiations which the parties can be assumed to have knowingly and purposefully used.

19. Although the courts may not review for reasonableness provisions of a collective bargaining agreement allocating health benefits, those provisions are subject to the rule that vested benefits may not be altered without the pensioner's consent. *UMWA Health and Retirement Funds v. Robinson*, 455 U.S. 562, 102 S.Ct. 1226, 71 L.Ed2d (1982). Nothing in the collective bargaining agreements indicates any clear intention of the parties to deprive the individual plaintiffs of their benefits under the circumstances of this case. The interpretations of the Trustees of the collective bargaining agreement and trust documents must be supported by substantial evidence, and may not be arbitrary and capricious. *Maggard v. O'Connell*, 671 F.2d 568 (D.C.Cir. 1982).

20. The parties retained the 1974 Benefit Plan and Trust in the 1978 Wage Agreement for the purpose of securing the promise of lifetime benefits to pensioners who might become "orphaned" by their last employer. The wage agreements contain provisions, including the "no longer in business" language of Article XX, designed to ensure that the signatory employer is primarily responsible for the provision of benefits to the employees.

21. The purpose and intent of the "no longer in business" language adopted in the 1981 Wage Agreement was to protect the Benefit Plan and Trust from manipulation by employers seeking to transfer their liabilities to the Trust. The modification required the retired employees to completely exhaust their remedies against a signatory employer liable for their benefits before the 1974 Benefit Plan and Trust would assume responsibility for those benefits—that is, to exhaust the assets of the liable employer and to pursue any successor, assigns, related divisions, subsidiaries, or parent corporation, to the extent that such entity might be liable for those benefits as a matter of law. The evidence does not indicate that the parties modified the "no longer in business" language in 1981 so as to leave certain groups of pensioners without benefits, or to cause the forfeiture of benefits in the event that the pensioner's last employer did not become signatory to a successor collective bargaining agreement after he had retired. No other interpretation is consistent with the undisputed testimony and other evidence that the modification was completely noncontroversial and readily agreed to by the Union, without even a suggestion of dissent from the Union bargaining council or membership. It is inconceivable that a change intended or contemplated to have the result required by the Trustees' interpretation would have not evoked at least some concern on the part of the union or its members.

22. Under the provisions of Article II of the 1974 Benefit Plan and Trust, the Trustees, as fiduciaries responsible to the intended beneficiaries, have the authority to provide health and other non-pension benefits to pensioners and their eligible dependents where the beneficiaries would otherwise lose their benefits because their last signatory employer is

no longer able or required to provide such benefits. Although the obligation to provide benefits to the plaintiffs in this case devolves upon the defendant, 1974 Benefit Plan and Trust, the Trustees of the Benefit Plan are seeking to avoid the very purpose justifying the plan's existence. The record clearly shows that the Benefit Trust was created to provide for retired miners who became "orphans" by not being included in some other plan. This trust is the "safety net" intended to protect the plaintiffs, and it may not be removed by the trustees now that it is needed.

23. The defendant United Mine Workers of America 1974 Benefit Plan and Trust is obligated to provide health and other non-pension benefits under the provisions of the 1978, 1981, and 1984 wage agreements.

24. By failing to provide such benefits and failing to exercise the requisite care, skill, prudence, and diligence, particularly in failing to administer the trust for the benefits of its intended beneficiaries, the defendant United Mine Workers of America 1974 Benefit Plan and Trust has arbitrarily and capriciously breached and violated its fiduciary obligations and duties to the individual plaintiffs under ERISA. 29 U.S.C. §1001, et seq.[3]

Accordingly, the Court is of the opinion that the defendant, UMWA 1974 Benefit Plan and Trust, its agents, employees, and all persons acting on its behalf, should be permanently restrained and enjoined from refusing or failing to provide the health care coverage, as such coverage is specified in the 1981 and 1984 wage agreements and the UMWA 1974 Benefit Plan and Trust, for all eligible pensioners under the UMWA 1974 Benefit Plan, whose last classified employment was with Royal, as well as their surviving spouses and eligible dependents.

The Court is of the further opinion that the 1974 Benefit Plan and Trust should reimburse the plaintiffs for all covered medical expenses incurred since October 1, 1984, including all expenses incurred by Royal pursuant to the preliminary injunction against Royal heretofore entered herein.

For the reasons stated above, the Court is of the further opinion that Royal should be dismissed as a party to this action

DATED: January 5, 1987

/s/ _____
DENNIS R. KNAPP, JUDGE

United States District Court

SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

Civil Action No. 5:86-0430

DISTRICT 29, UNITED MINE WORKERS OF AMERICA, AND HERSCHEL HENSON,
Plaintiffs,

v.

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST, MANLO MINING COMPANY, AND GOPHER MINING CO.,
Defendants.

JUDGMENT ORDER

In accordance with the Court's Memorandum Opinion of even date herewith, it is hereby ORDERED that the defendant, United Mine Workers of America 1974 Benefit Plan and Trust, its agents, employees and all persons acting on its behalf, are hereby restrained and enjoined from refusing or failing to maintain intact the health care coverage of the pensioner, Herschel Henson, under the UMWA 1974 Benefit Plan and Trust, whose last classified employment was with Manlo Mining Company, and his surviving spouse and dependents, as such coverage is specified in the National Bituminous Coal Wage Agreements of 1978, 1981, and 1984, and the UMWA 1974 Benefit Plan and Trust.

It is further ORDERED that this preliminary injunction will not become effective until plaintiffs post and file a bond herein in the sum of Five Thousand Dollars ($5,000), conditioned for such costs and damages as may be incurred or suffered by any party who is found to have been here

wrongfully restrained or enjoined, said bond and surety to be approved by the Court of the clerk thereof.

The Clerk is directed to mail certified copies of this order to counsel of record herein.

DATED: July 10, 1986

/s/ _____
DENNIS R. KNAPP, JUDGE

United States District Court

SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION

Civil Action No. 5:86-0430

DISTRICT 29, UNITED MINE WORKERS OF AMERICA, AND HERSCHEL HENSON,
Plaintiffs,

v.

THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST, MANLO MINING COMPANY, AND GOPHER MINING CO.,
Defendants.

MEMORANDUM OPINION

Plaintiffs filed this action in the United States District Court on April 10, 1986, alleging that either defendant Manlo Mining Company (Manlo), defendant Gopher Mining Co. (Gopher), or defendant The United Mine Workers of America 1974 Benefit Plan and Trust (UMWA 1974 Benefit Plan and Trust), is responsible for the health benefits of the individual plaintiff, Herschel Henson. A temporary restraining order was entered on April 18, 1986, restraining defendant Manlo from refusing to provide health benefits and life insurance for said individual plaintiff. The matter is now before the Court on plaintiffs' motion for a preliminary injunction. The Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff, District 29, United Mine Workers of America, is a labor organization within the meaning of Section 2(g) of the Labor-Management Relations Act (LMRA), 29 U.S.C. §152(5), and, inter alia, represents the former employees of defendants Manlo and Gopher.

2. Plaintiff, Herschel Henson, who resides in Springdale, West Virginia, was, until retiring in December, 1978, a classified union employee of Manlo. Since May, 1979, he has been receiving a United Mine Workers of America pension.

3. Defendant Manlo is a viable and solvent West Virginia corporation, which at all relevant times was or is engaged in commerce within the meaning of Sections 2(2) and 2(7) of the LMRA, 29 U.S.C. §§152(2) and 152(7). Manlo was a "de facto" signatory to the National Bituminous Coal Wage Agreement of 1978.

4. During the term of the National Bituminous Coal Wage Agreement of 1978, defendant Gopher became a successor company to defendant Manlo.

5. Defendant Gopher was signatory to and bound by the National Bituminous Coal Wage Agreement on 1978, and other predecessor agreements, and the 1981 Agreement until the latter Agreement expired, effective September 30, 1984. Gopher is not signatory to the 1984 Agreement and is no longer actively engaged in mining coal.

6. Defendant UMWA 1974 Benefit Plan and Trust is an employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. §1002(3). Said plan is an irrevocable trust created and perpetuated pursuant to the National Bituminous Coal Wage Agreements of 1974, 1978, 1981, and 1984, and has its principal office in Washington, D. C., with field service offices in Madison, Boone County, West Virginia, and Beckley, Raleigh County, West Virginia.

7. Pursuant to the provisions of the 1978, 1981, and 1984 National Bituminous Coal Wage Agreements, all health and non-pension benefits for working miners, pensioners and certain disabled miners and their dependents, are to be provided by the employer through private insurance carriers. In the event an employer is no longer able or required to provide the subject health and non-pension benefits for eligible working miners, pensioners, disabled miners and their eligible dependents, the Agreements provide that said benefits are

to be provided by defendant UMWA 1974 Benefit Plan and Trust.

8. The defendant UMWA 1974 Benefit Plan and Trust has determined that defendant Gopher is not "no longer in business" and further Gopher has refused to provide health and other non-pension benefits to the eligible plaintiff and his dependents.

9. Notwithstanding the Fourth Circuit Court of Appeals' recent ruling in the case of *District 29, United Mine Workers of America v. Royal Coal Company*, 768 F.2d 588, that the obligation to provide the subject benefits terminated upon the expiration of the 1981 National Bituminous Coal Wage Agreement, the defendant UMWA 1974 Benefit Plan and Trust has continued to refuse to provide the health and other non-pension benefits for this eligible pensioner of Gopher.

CONCLUSIONS OF LAW

1. Jurisdiction over this matter is conferred upon this Court pursuant to Section 301 of the LMRA of 1947, 29 U.S.C. §185, and Section 502 of ERISA, 29 U.S.C. §1132.

2. The individual plaintiff, upon retiring, became entitled to health and other non-pension benefits for life, pursuant to Article XX of the Agreements of 1978 and 1981, and Article II, Sections B, D, and E of the Employee Benefit Plan established pursuant to the Agreements.

3. Collective bargaining agreements, such as are involved here, fixed certain rights and obligations of the employer and employees, and of the trusts which they created. It was contemplated by the parties to those agreements that certain rights, including the right to health benefits, should continue in effect for the natural life of the worker. No other interpretation comports with the special nature of those labor agreements. Such contracts have their genesis in industrial relationships that encompass factors not born of the moment, but created by economic necessity. Each party bargained for a commodity supplied by the other, and to be utilized for a time extending beyond the contract's specific date of termi-

nation. This arrangement gave rise to the vested right in the employees covered by the contracts to continue to receive the emoluments of their labor beyond the life of the contracts.

4. Although ERISA does not impose any minimum vesting requirements with respect to employee welfare benefit plans, such as the health benefit plan involved in this case, that circumstance does not indicate any intention on the part of Congress to endorse unfettered termination of such plans. This Court must look to the developing federal common law of ERISA and to the intent of the parties to the collective bargaining agreements in determining whether the parties intended that the right of retirees to health and other non-pension benefits should vest, and if so, when. In fashioning a common law rule governing the vesting of non-pension retiree benefits, it is appropriate to consider the broadly ameliorative policies of ERISA, and also to look to pre-ERISA state law governing the vesting of pension and other retiree benefits.

5. The modern view of vesting of pension and other retiree benefits holds that the promise of a pension or other retiree benefits constitutes an offer, which becomes a binding obligation upon performance of the required service by the employee. See, *Rochester Corporation v. Rochester*, 450 F.2d 118 (4th Cir. 1971); *Hoefel v. Atlas Tack Corp.*, 581 F.2d 1 (1st Cir. 1978); *In Re White Farm Equipment*, 42 B.R. 1005, 5 E.B.C. 2130 (N.D.OH 1984).

6. The parties to the 1978, 1981, and 1984 National Bituminous Coal Wage Agreements clearly intended that retirees, upon becoming eligible for a pension, would be entitled to health benefits for life. All three wage agreements contained in Article XX thereof a "General Description of the Health and Retirement Benefits," which repeatedly states, with respect to different classes of pensioners, that

> [s]uch pensioner will be entitled to retain a Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

7. The intent of the parties to ensure that retirees would continue to receive health benefits for life pursuant to the language of the collective bargaining agreements is further indicated by the fact that the parties took great pains to establish a "safety net," in the form of retaining the 1974 Benefit Plan and Trust, to provide an alternative mechanism for the provision of health and other non-pension benefits to those eligible employees, pensioners, and dependents in the event that the last employer was no longer capable of or responsible for providing such benefits.

8. The Court concludes that the parties intended that an employee's right to lifetime health benefits vest upon his retirement. Each collective bargaining agreement and the pension and benefit plans in existence pursuant to such agreement constituted an offer to any employee who was qualified for retirement under that plan that he could accept by retiring during the term of the agreement. Once an employee took that action, the offer-and-acceptance required to constitute a contractual obligation was complete. The employee-pensioner's rights were fixed according to the terms and conditions of the collective bargaining agreement and benefit plans in effect at the time he retired. No pensioner's benefits may be reduced by virtue of the provisions of a collective bargaining agreement executed after his retirement when he was no longer a union member and therefore unrepresented at negotiations. *Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 92 S.Ct. 383, 30 L.Ed.2d 341 (1971), n. 20, *United Mine Worker's Health and Retirement Funds v. Robinson*, 455 U.S. 562, 102 S.Ct. 1226, 71 L.Ed.2d 419 (1982), n. 14. This is particularly true in the absence of any clearly expressed agreement of the parties permitting such reductions.

9. ERISA requires the disclosure and reporting to participants and beneficiaries of financial and other information regarding employee benefit plans covered by the Act. 29 U.S.C. §1001(b). That requirement specifically includes the requirement that such disclosures and summary plan descriptions include

> a statement clearly identifying circumstances which may result in . . . loss, forfeiture, or suspension of any benefits that a participant might otherwise reasonably expect the plan to provide on the basis of the [Summary Plan Descriptions] description of benefits . . . . 29 C.F.R. §2520.102-3(1).

In the absence of such disclosure, a fiduciary under ERISA may be precluded from enforcing undisclosed forfeiture provisions. See, *Zittrouer v. Uarco Inc. Group Benefit Plan*, 582 F. Supp. 1471 (N.D.VA 1984).

10. Nothing in the 1978, 1981, or 1984 Wage Agreements, the benefit plans established pursuant to those agreements, or the Summary Plan Descriptions, clearly discloses to plan beneficiaries that their entitlement to health benefits may be forfeited if their last signatory employer subsequently fails to become signatory to successor collective bargaining agreements.

11. The defendant UMWA 1974 Benefit Plan and Trust is obligated to provide health and other non-pension benefits under the provisions of the 1978, 1981, and 1984 National Bituminous Coal Wage Agreements.

12. The obligations of the defendant UMWA 1974 Benefit Plan and Trust must be considered in the light of a unitary interpretation of the 1974 Benefit Plan and Trust and the 1978, 1981, and 1984 Wage Agreements. The essence of these obligations flows from a consideration of the contract, their history, and the trust documents as an entirety; rather than from the parsing of individual phrases narrowly, without adequate attention to the documents' overweening objectives. The overwhelming purpose of the retention of the 1974 Benefit Plan and Trust was to insure continuing, uninterrupted coverage of benefits for eligible pensioners, dependents, and laid-off employees in circumstances where the responsible employer is no longer providing such benefits.

13. The wage agreements contain provisions, including the "no longer in business" language of Article II, designed to insure that the responsible signatory employer is primarily

responsible for the provision of benefits to the employees for whom it accepted responsibility by becoming signatory to the wage agreements. However, under the provisions of Article II of the 1974 Benefit Plan and Trust, the Trustees of the Funds have the authority, and indeed a fiduciary responsibility to the intended beneficiaries, to provide health and other non-pension benefits in instances in which their last signatory employer is no longer able or required to provide such benefits, and thus where the beneficiaries would otherwise lose their benefits.

14. In light of the ruling of the United States Court of Appeals for the Fourth Circuit in the *Royal* case that the obligation of the coal company to provide health and other non-pension benefits terminated upon the expiration of the 1981 National Bituminous Coal Wage Agreement, it is clear that the obligation to provide benefits to the plaintiff devolves upon the defendant UMWA 1974 Benefit Plan and Trust.

15. By failing to provide such benefits and failing to exercise the requisite care, skill, prudence and diligence, particularly in failing to administer the trust for the benefit of its intended beneficiaries, the defendant UMWA 1974 Benefit Plan and Trust has arbitrarily and capriciously breached and violated its fiduciary obligations and duties to the individual plaintiff under ERISA, 29 U.S.C. §100, et seq.

16. For a preliminary injunction to be issued, four factors must first be considered by the Court: (1) Has the petitioner made a strong showing that it is likely to prevail upon the merits? (2) Has the petitioner shown that without such relief it will suffer irreparable injury? (3) Would the issuance of the injunction substantially harm other interested parties? (4) Wherein lies the public interest? See, *Blackwelder Furniture Co. v. Seilig Manufacturing Co.*, 550 F.2d 189 (4th Cir. 1977).

17. The Court concludes that a preliminary injunction should issue inasmuch as the plaintiffs have shown a reasonable likelihood of prevailing on the merits of this action and a substantial potentiality of incurring great, immediate and irreparable harm if such preliminary injunction is not issued,

and any harm or loss which may be caused to the defendants by the issuance of such preliminary injunction is disproportionately minor compared to the great, immediate and irreparable harm and loss to the individual plaintiff if it is not issued. Furthermore, it is apparent that the public interest is best served by continued health care coverage of the pensioner and his family.

The Clerk is directed to mail certified copies of this Memorandum Opinion to counsel of record herein.

DATED: July 10, 1986

/s/ _____
DENNIS R. KNAPP, JUDGE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 86-3709
No. 87-3018

DISTRICT 29, UNITED MINE WORKERS OF AMERICA, ET AL.,

Appellees,

v.

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Appellant,

THE BITUMINOUS COAL OPERATORS' ASSOCIATION, INC.,

Amicus Curiae,

and

MANLO MINING CO., ETC., ET AL.,

Defendants.

On Petition for Rehearing with Suggestion for Rehearing In Banc.

ORDER

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Chapman, with the concurrence of Judge Britt, United States District Judge sitting by designation and Judge MacKenzie, United States District Judge sitting by designation.

For the Court,

JOHN M. GREACEN
CLERK

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 85-1336

DISTRICT 29, UNITED MINE WORKERS OF AMERICA; LOCAL UNION 5821; LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA; GARLAND WALKUP, RETIREE; MADELINE R. THOMAS, WIDOW; JOSEPH M. HANSHEW, DISABLED RETIREE; AND JOHN AND MARY DOE,

Appellees,

v.

ROYAL COAL COMPANY,

Appellant,

and

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST,

Defendant.

Argued May 9, 1985.
Decided July 23, 1985.

Forrest H. Roles, Charleston, W.Va. (John R. Woodrum, Washington, D.C., Anna M. Norton, Smith, Heenan & Althen, Charleston, W.Va., on brief) for appellant.

Bradley J. Pyles, Logan, W.Va. (Charles F. Donnelly, Grant Crandall, Crandall, Pyles & Crandall, Logan, W.Va., Deborah Haynes, Larry Harless, Charleston, W.Va., on brief) for appellees.

Before WIDENER and CHAPMAN, Circuit Judges and TURK, United States District Judge for the Western District of Virginia, sitting by designation.

CHAPMAN, Circuit Judge:

The issue in this expedited appeal is whether a coal company's obligation to provide health benefits and life insurance coverage to its retired and disabled coal miners under the National Bituminous Coal Wage Agreements of 1978 and 1981 continues beyond the expiration of those Agreements. Defendant Royal Coal Company (Royal) appeals from a preliminary injunction issued by the district court requiring Royal to provide these benefits to its former employees (or their surviving spouses) who either retired or became disabled prior to the expiration of the 1978 and 1981 Wage Agreements. Royal ceased all active mining operations during the term of the 1981 Wage Agreement and has not become a signatory to the 1984 Wage Agreement. We hold that Royal's obligation to provide health benefits and life insurance coverage to its retired and disabled coal miners under the 1978 and 1981 Wage Agreements ceased upon the expiration of those Agreements. Accordingly, we vacate the district court's preliminary injunction and remand the case for further proceedings.

I

Plaintiffs represent a class of approximately seventy-eight retired and disabled coal miners, and widows of retired and disabled coal miners, whose last employment in the coal industry was with Royal.[1] Plaintiffs brought this action against Royal and the United Mine Workers of America 1974 Benefit Plan and Trust (The 1974 Benefit Plan), alleging that either Royal or the 1974 Benefit Plan was responsible for providing health benefits and life insurance coverage to the class members.

Prior to October 1, 1984, the class members were receiving pension benefits from the United Mine Workers of America 1974 Pension Plan and Trust and nonpension benefits, including health benefits and life insurance coverage, from

[1] Plaintiffs are District 29, United Mine Workers of America, Local Unions Nos. 5821 and 6046, United Mine Workers of America, and three individuals who were either union members who had retired from the employment of Royal or dependent survivors of such members.

their last employer, Royal. Most of the class members (or their husbands, in the case of widows) retired from Royal prior to June 5, 1981, the effective date of the 1981 Wage Agreement, and all of them retired prior to the expiration of the 1981 Wage Agreement on October 1, 1984.

For many years Royal had been a signatory to national agreements negotiated between the United Mine Workers of America (UMWA) and the Bituminous Coal Operators Association (BCOA), including the 1978 and 1981 Wage Agreements. Royal ceased all active mining operations during the term of the 1981 Wage Agreement and has not become a signatory to the 1984 Wage Agreement. Without notice to plaintiffs Royal ceased providing health benefits and life insurance coverage to the class members on or about October 1, 1984. The 1974 Benefit Plan has declined to assume responsibility for providing these benefits on the ground that Royal has sufficient assets to pay the benefits and thus does not qualify as "no longer in business" within the meaning of the 1978 and 1981 Wage Agreements.

Plaintiffs filed this action on March 7, 1985. On March 12, 1985, the district court issued a temporary restraining order requiring Royal to reinstate health benefits and life insurance coverage for a period of ten days. On March 18, the district court held a hearing on plaintiffs' motion for a preliminary injunction, and on April 2, 1985, the district court granted a preliminary injunction against Royal. The district court made no ruling as to the 1974 Benefit Plan's liability. Furthermore, the district court denied Royal's motion to suspend the preliminary injunction pending appeal, but increased the injunction bond from $15,000 to $30,000. This court has jurisdiction over this appeal pursuant to 28 U.S.C. §1292(a).

II

[1, 2] Whether an employer's obligation to provide benefits to its retirees continues beyond the expiration of the underlying collective bargaining agreement depends upon the intent of the parties. *International Union, United Automobile, Aerospace & Agricultural Implement Workers v. Yard-*

BEST AVA

Man, Inc., 716 F.2d 1476, 1479 (6th Cir.1983), *cert. denied*, — U.S. —, 104 S.Ct. 1002, 79 L.Ed.2d 234 (1984). *Accord*, *Upholsterers' International Union v. American Pad & Textile Co.*, 372 F.2d 427 (6th Cir.1967); *Bower v. Bunker Hill Co.*, 725 F.2d 1221 (9th Cir.1984). Moreover, whether the parties intended such an employer's obligation to continue beyond the expiration of the collective bargaining agreement is primarily a question of contract interpretation. *See John Wiley & Sons v. Livingston*, 376 U.S. 543, 555, 84 S.Ct. 909, 917, 11 L.Ed.2d 898 (1964); *Local 1251, International Union, UAW v. Robertshaw Controls Co.*, 405 F.2d 29, 33 (2d Cir.1968). Thus, we must first look to the language of the 1978 and 1981 Wage Agreements for any clear manifestations of the parties' intent. *See Yard-Man*, 716 F.2d at 1479; *Kellogg Co. v. NLRB*, 457 F.2d 519, 524 (6th Cir.1972); *cert. denied*, 409 U.S. 850, 93 S.Ct. 58, 34 L.Ed.2d 92 (1972).

Article XX, Section (c)(3)(i) of the 1978 Wage Agreement provides, in pertinent part:

> . . . [E]ach signatory Employer shall establish an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other nonpension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last classified employment was with such Employer. The benefits provided pursuant to such plans shall be guaranteed *during the term of this Agreement* by each Employer at levels set forth in such plans. . . . (Emphasis added).

The same provision in the 1981 Wage Agreement states, in pertinent part:

> Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other nonpension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The

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> benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed *during the term of this Agreement* by that Employer at levels set forth in such plans. (Emphasis added).

This court recently considered a similar issue under Article XX, Section (c)(3)(i) of the 1978 Wage Agreement in *District 17, United Mine Workers v. Allied Corp.*, 765 F.2d 412 (4th Cir.1985 (*en banc*)). In that case Allied Corporation sold its mining operations during the term of the 1978 Wage Agreement but failed to fulfill its duty under that Agreement's successorship clause of requiring its purchasers to assume its labor contract duties, including its collective bargaining duties with respect to health and other nonpension benefits for its retirees. Allied was not a signatory to the 1981 Wage Agreement. The district court ruled first that Allied's contractual obligation to provide health and other nonpension benefits to its retirees did not terminate with the expiration of the 1978 Wage Agreement and, alternatively, that even if Allied's obligation to provide the benefits did not continue, that Allied was yet obligated to provide them because the purchasers' failure to agree to provide the benefits in subsequent periods was a legally caused result of Allied's breach of the successorship clause contained in the 1978 Wage Agreement. Accordingly, the district court required Allied to continue to pay the benefits, even though the 1978 Wage Agreement had expired, unless and until Allied could negotiate with the purchasers for the latter two companies to provide the benefits.

This court affirmed the district court's decision in a five–four *en banc* decision. The *en banc* majority affirmed the district court's decision on the ground that "Allied's breach occurred in 1980 when it transferred the mines to [the purchasers] without passing on all of its obligation as required by Article I of the 1978 collective bargaining agreement." At 420. However, the *en banc* majority appeared to accept the dissent's position that a coal mine operator's contractual obligation to provide health and other nonpension benefits to its retirees under the 1978 Wage Agreement does not continue

beyond the termination of that Agreement. Specifically addressing Article XX, Section (c)(3)(i) of the 1978 Wage Agreement, the *en banc* majority stated:

> *Although this obligation existed only for the life of the 1978 contract, which expired in 1981*, it was perpetuated in the 1981 and 1984 contracts.
>
> Superficially, *it might appear that none of the defendants is liable for the retirees' benefits.* Because Allied had withdrawn from the coal business in 1980 it was not a signatory to the 1981 contract. Armco and Shannon Pocahontas, on the other hand, although signatories to the 1978 and 1981 contracts, agreed with Allied when they individually acquired the two mines in 1980 that they would not assume the obligations to pay benefits to Allied's retirees. In creating the 1974 Benefit Trust, the union and the coal operators anticipated a successor scenario and agreed that, under such circumstances, the 1974 Benefit Trust could not assume responsibility for payment of the benefits.
>
> *If that were the complete picture, the answer to this dispute simply would be that after expiration of the 1978 agreement on March 27, 1981, no one had a duty to provide the retired miners with the disputed benefits.*

At 417 (emphasis added).

The *en banc* dissent adopted the original panel's majority decision. At 421. *See District 17, United Mine Workers v. Allied Corp.*, 735 F.2d 121 (4th Cir.1984). The panel majority, and thus the *en banc* dissent, was even more explicit than the *en banc* majority in stating that a coal mine operator's obligation to provide health and other nonpension benefits to its retirees under the 1978 Wage Agreement did not continue beyond the expiration of that Agreement. Specifically, the panel majority stated:

> The clear language of the Wage Agreement required health benefit payments only during the term of the

contract and not thereafter. The district court was clearly in error in extending Allied's obligation to pay for these benefits beyond the expiration date (March 26, 1981) of the 1978 contract. Allied is not a signatory to the 1981 National Bituminous Coal Wage Agreement.

735 F.2d at 124. The panel majority also stated:

> There is no factual or legal basis for the district court's conclusion that obligations under the 1978 Wage Agreement extended past its expiration date. Employer obligations and employee rights, under a collective bargaining agreement, do not survive the expiration of the agreement absent a clear intention of the parties. *Local 1251 UAW v. Robertshaw Controls Co.*, 405 F.2d 29 (2nd Cir.1968). The testimony of the contract negotiators clearly show that all rights and benefits were open for negotiation every three years.

735 F.2d at 127.

The panel majority, and thus the dissent in the *en banc* decision, based its interpretation of the 1978 Wage Agreement on the language contained in Article XX, Section (c)(3)(i)[2] and the deposition testimony of the contract negotiators that all rights and benefits under the collective bargaining agreements were open for negotiation every three years. *Id.* Furthermore, this interpretation of the 1978 Wage Agreement is consistent with the International Union's understanding of similar language contained in the 1981 Wage Agreement as expressed by a letter from the officers of the union to the members of the union, including 1974 pensioners and their surviving spouses.[3]

---

[2] "The benefits provided pursuant to such plans shall be guaranteed *during the term of this Agreement* by each Employer at levels set forth in such plans." (Emphasis in the panel's opinion).

[3] In anticipation of the expiration of the 1981 Wage Agreement, the officers of the International Union sent a letter to the members of the union informing them of what would occur if the 1981 Wage Agreement

(footnote continues)

[3] Based upon the *en banc* majority's interpretation of the 1978 Wage Agreement in *Allied Corp.*, especially when coupled with the more explicit language contained in the *en banc* dissent, we hold that Royal's obligation to provide health benefits and life insurance coverage to its retired and disabled coal miners under the 1978 and 1981 Wage Agreements does not extend beyond the expiration of those Agreements. Thus, we vacate the district court's preliminary injunction and remand the case for further proceedings.

III

On remand the district court should determine the damages sustained by Royal as a result of the injunction. The district court should also determine whether the 1974 Benefit Plan is obligated to provide benefits to these class members.

VACATED AND REMANDED.

(footnote continued)
expired without a successor agreement providing for their health care being negotiated. The letter stated that in the event of a termination of the 1981 Wage Agreement:

> Health care for you and your dependents will continue from the company which currently provides your coverage in the event your employer is working. If the company which provides your benefits is selectively struck, health care should be available at your expense from the company. All 1974 pensioners who are members in good standing of the UMWA are also eligible to purchase benefits through the UMWA Selective Strike insurance program, if their company is the target of a selective strike, instead of buying insurance from the coal operator. App. at 34.

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST

JUNE 7, 1981

ARTICLE II: ELIGIBILITY

The following persons are eligible to receive the health benefits pursuant to Article III for the period from March 27, 1981, through the expiration date of the 1981 Wage Agreement:

A. Pensioners

(1) Health and death benefits under Article III hereof shall be provided to any Pensioner who receives pension benefits under the 1974 Pension Plan, or any successor thereto, and who would otherwise cease to receive benefits because the signatory Employer (including successors and assigns) with whom such Pensioner last worked as a classified Employee is no longer in business (as determined pursuant to Article II F of the 1974 Benefit Plan in effect on March 26, 1981 for signatory Employers no longer in business before June 7, 1981, and pursuant to paragraph E(4) of this Article for Employers signatory to the 1981 Wage Agreement that are no longer in business after June 6, 1981), provided that (i) such Pensioner is not receiving a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, or (ii) such Pensioner is not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding the above, any Pensioner

(a) who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, or

(b) whose last day of credited service under the 1974 Pension plan was on or before December 5, 1977 and as of such last day of credited service:

(i) was eligible for a deferred vested pension based on twenty (20) or more years of credited service, or

(ii) had attained age 55 and was eligible for an age 55 retirement pension as defined in the 1974 Pension Plan,

and as of March 26, 1981, was receiving or had applied and was age and service eligible for, a pension under the 1974 Pension Plan to commence no later than April 1, 1981, and was not eligible as of March 26, 1981, for benefits under an individual employer benefit plan pursuant to Article XX, Section (c)(3) of the National Bituminous Coal Wage Agreement of 1978, shall be eligible for such benefits, subject to all other provisions of this Plan.

(2) Any person who has been covered as a Pensioner under this Plan, and is again employed in classified signatory employment after June 7, 1981, with an Employer, shall have coverage under the Plan suspended during such period of employment. If such person is credited with at least three or more years of service under the 1974 Pension Plan after June 7, 1981 while so employed with the same Employer, coverage shall be terminated under this Plan.

(3) Health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least $500 per month.

* * *

E. Non-Retired Miners on Lay-Off

Effective March 1, 1980, a non-retired miner who is on lay-off status and who otherwise is eligible for health and other non-pension benefits under the health plan maintained by the Employer by which he is laid-off, as required and limited by the 1978 or 1981 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, but who does not receive such benefits because his Employer is no longer in business and, because of financial inability, has failed to provide such benefits, is eligible to receive such benefits under the 1974 Benefit Plan and Trust, as amended, provided, however, that:

1. In no event shall the benefits payable to any such miner exceed the coverage provided by the 1974 Benefit Plan and Trust;

2. In no event shall the total amount of assets in the 1974 Benefit Plan and Trust used to provide such benefits to this class of non-retired, laid-off miners exceed Two Million Dollars ($2,000,000);

3. The period of coverage provided under this section E shall commence on the day following the day the miner is laid off. The period of coverage is generally defined and limited by the 1978 or 1981 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, *provided however* that notwithstanding any other provision herein, in the 1978 or 1981 Wage Agreement, whichever is applicable, or the "Employers Plan" for UMWA represented employees, the coverage hereunder extends only to covered health services rendered to any such miner on or before the expiration date of the 1981 Wage Agreement, and other non-pension benefits (Life and Accidental Death & Dismemberment Benefits) incurred on or before the expiration date of the 1981 Wage Agreement, regardless of whether such miner has otherwise exhausted his period of eligibility as defined and limited by the 1978 or 1981 Wage Agreement, whichever is applicable, and the "Employers Plan" for UMWA represented employees by that date. Accordingly, benefits are not payable hereunder for any health services rendered to any such miners on or after the expiration date of the 1981 Wage Agreement and other non-pension benefits (Life and Accidental Death & Dismemberent Benefits) incurred on or after the expiration date of the 1981 Wage Agreement.

4. The Trustees of the 1974 Benefit Plan and Trust shall determine, within the limitations described in subparagraphs a and b, below, when an employer is "no loner in business," as that term is used in this section E and Article XX of the 1978 or 1981 Wage Agreement, whichever is applicable. The term "no longer in business" describes those employers signatory to the 1978 or 1981 Wage Agreement, whichever is applicable, which:

a. have ceased all mining operations and have ceased employing persons under the 1978 or 1981 Wage Agreement, whichever is applicable, with no reasonable expectation that such operations will start up again; and

b. are financially unable (through either the business entity that has ceased operations as described in subparagraph a, above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by the 1978 or 1981 Wage Agreement, whichever is applicable, or not) to provide health and other non-pension benefits to its non-retired, laid-off miners, as required by Article XX of the 1978 or 1981 Wage Agreement, whichever is applicable.

* * *

UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN & TRUST

[October 1, 1984]

ARTICLE II

The following persons are eligible to receive the health benefits pursuant to Article III for the period from October 1, 1984, through the expiration date of the 1984 Wage Agreement:

A. Pensioners

(1) Health and death benefits under Article III hereof shall be provided to any Pensioner who receives pension benefits under the 1974 Pension Plan, or any successor thereto, and who would otherwise cease to receive benefits because the signatory Employer (including successors and assigns) with whom such Pensioner last worked as a classified Employee is no longer in business (as determined pursuant to Article II F of the 1974 Benefit Plan in effect on March 26, 1981 for signatory Employers no longer in business before

June 7, 1981, and pursuant to paragraph E(4) of this Article for Employers signatory to the 1981 or 1984 Wage Agreement that are no longer in business after June 6, 1981), provided that (i) such Pensioner is not receiving a pension based in whole or in part on years of service credited under the terms of Article II G of the 1974 Pension Plan, or any corresponding paragraph of any successor thereto, or (ii) such Pensioner is not receiving a deferred vested pension based on less than 20 years of credited service. Notwithstanding the above, any Pensioner:

(a) who was eligible for benefits under the 1974 Benefit Plan as a Pensioner on December 5, 1977, or

(b) whose last day of credited service under the 1974 Pension Plan was on or before December 5, 1977 and as of such last day of credited service:

(i) was eligible for deferred vested pension based on twenty (20) or more years of credited service; or

(ii) had attained age 55 and was eligible for an age 55 retirement as defined in the 1974 Pension Plan,

and as of March 26, 1981, was receiving, or had applied and was age and service eligible for, a pension under the 1974 Pension Plan to commence no later than April 1, 1981, and was not eligible as of March 26, 1981, for benefits under an individual employer benefit plan pursuant to Article XX, Section (c)(3) of the National Bituminous Coal Wage Agreement of 1978, shall be eligible for such benefits subject to all other provisions of this Plan. Any Pensioner who was pension eligible on June 6, 1981, and whose last classified Employer is no longer in business pursuant to E(4) of this Article shall not be denied benefits provided herein solely because of subsequent employment for an employer who was not signatory to the Wage Agreement.

(2) Any person who has been covered as a Pensioner under this Plan, and is again employed in classified signatory employment after June 7, 1981, with an Employer, shall have coverage under the Plan suspended during such period of employment. If such person is credited with at least three or

more years of service under the 1974 Pension Plan after June 7, 1981, while so employed with the same Employer, coverage shall be terminated under this Plan.

(3) Health benefits shall not be provided during any month in which the Pensioner is regularly employed at an earnings rate equivalent to at least $500 per month.

* * *

E. Non-Retired Miners of Lay-Off

Effective March 1, 1980, a non-retired miner who is on lay-off status and who otherwise is eligible for health and other non-pension benefits under the health plan maintained by the Employer by which he is laid-off, as required and limited by the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, but who, does not receive such benefits because his Employer is no longer in business and, because of financial inability, has failed to provide such benefits, is eligible to receive such benefits under the 1974 Benefit Plan and Trust, as amended, provided, however, that:

1. In no event shall the benefits payable to any such miner exceed the coverage provided by the 1974 Benefit Plan and Trust;

2. In no event shall the total amount of assets in the 1974 Benefit Plan and Trust used to provide such benefits to this class of non-retired, laid-off miners exceed Two Million Dollars ($2,000,000);

3. The period of coverage provided under this section E shall commence on the day following the day the miner is laid off. The period of coverage is generally defined and limited by the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, and the "Employers Plan" for the UMWA represented employees, *provided however* that notwithstanding any other provision herein, in the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, or the "Employers Plan" for UMWA represented employees, the coverage hereunder

extends only to covered health services rendered to any such miner on or before the expiration date of the 1984 Wage Agreement, and other non-pension benefits (Life and Accidental Death & Dismemberment Benefits) incurred on or before the expiration date of the 1984 Wage Agreement, regardless of whether such miner has otherwise exhausted his period of eligibility as defined and limited by the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, and the "Employers Plan" for UMWA represented employees by that date. Accordingly, benefits are not payable hereunder for any health services rendered to any such miners on or after the expiration date of the 1984 Wage Agreement and other non-pension benefits (Life and Accidental Death & Dismemberment Benefits) incurred on or after the expiration date of the 1984 Wage Agreement.

4. The Trustees of the 1974 Benefit Plan and Trust shall determine, within the limitations described in subparagraphs a and b, below, when an employer is "no longer in business," as that term is used in this section J and Article XX of the 1978, 1981 or 1984 Wage Agreement, whichever is applicable. The term "no longer in business" describes those employers signatory to the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, which:

a. have ceased all mining operations and have ceased employing persons under the 1978, 1981 or 1984 Wage Agreement whichever is applicable, with no reasonable expectation that such operations will start up again, and

b. are financially unable (through either the business entity that has ceased operations as described in subparagraph a, above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by the 1978, 1981 or 1984 Wage Agreement, whichever is applicable, or not) to provide health and other non-pension benefits to its non-retired, laid-off miners, as required by Article XX of the 1978, 1981 or 1984 Wage Agreement, whichever is applicable.

In the event that an Employer files for or is placed in bankruptcy under the federal bankruptcy laws, the Trustees

may, in their discretion, where circumstances indicate it is prudent and pending their own investigation, grant affected retirees and other employees temporary eligibility under Article II of this Plan; provided that, if the Trustees finally determine that the Employer should not be considered to be "no longer in business," the affected retirees and employees shall become ineligible for benefits under this Plan, and the Employer shall be liable to the Plan for all benefits paid prior to the determination of ineligibility. Temporary eligibility may not be granted if the Trustees have a reason to believe that the Employer intends to continue in business or that there exist any financially able successors, assigns, or related entities which may affect eligibility under subparagraph (b) above. Such temporary eligibility shall be deemed to be effective as of the date on which the Employer became no longer in business; and such date may be established to have occurred prior to the date on which the Trustees make their determination.

* * *

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1978

ARTICLE XX

HEALTH AND RETIREMENT BENEFITS

Section (a) **General Purpose**

This Article makes provision for pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts referred to in Sections (b) and (c) of this Article.

A general description of the benefits to be provided appears immediately following this Article.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the benefit program established under the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust has assumed the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from the 1950 Benefit Trust, the 1974 Benefit Trust, or the individual benefit plans referred to in Section (c).

The general purpose of the plans referred to in this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; and financial support for surviving spouses and surviving dependents provided by each of the Trusts and Plans referred to in this Article.

Except as otherwise specifically set forth in this Article, it is agreed that the Trusts referred to in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and shall endure as long as the purposes for their creation shall exist.

Section (b) **1950 Plans and Trusts**

The United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust") is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund have heretofore been amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

The United Mine Workers of America 1950 Benefit Plan and Trust ("1950 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) **1974 Plans and Trusts**

(1) The United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust") is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and was effective December 6, 1974.

(2) The 1974 Benefit Plan and Trust ("1974 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides certain health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1974 Benefit Trust and under the terms of this Article.

(3) (i) Except as provided in (ii) below, effective on June 1, 1978, each signatory Employer shall establish an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last classified employment was with such Employer. The benefits provided pursuant to such plans shall be guaranteed during the term of this Agreement by each Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection will be incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

During the interim period commencing on the effective date of this Agreement and ending on May 31, 1978, each Employer shall pay to the 1974 Benefit Trust as provided in Section (d)(1)(iv) of this Article.

(ii) In lieu of (i) above, any signatory Employer may elect to implement the above health benefit coverage through a private insurance carrier(s) on the effective date of this Agreement. Any signatory Employer who elects under this subparagraph (ii) to implement health benefit coverage through a private insurance carrier(s), from the date of this Agreement, shall have no further responsibilities, except as provided in Section (d)(1)(iv), (v)(a) and (vi)(a) of this Article, to make contributions to or otherwise to be responsible for benefits provided under the 1974 Benefit Plan and Trust.

(iii) The 1974 Benefit Plan and Trust shall continue after May 31, 1978, for the sole purpose of providing health and other non-pension benefits, during the term of this Agree-

ment, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) from which he retired is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last classified employment was a signatory Employer which is no longer in business.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

Section (d) **Contributions by Employers**

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal produced by such Employer for use or for sale, and, in addition, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per hours worked by each of the Employer's Employees who perform classified work under this Agreement.

BCOA may elect to change or convert the cents per ton basis of funding contained herein to a different method of funding so long as such alternate method produces the equivalent contribution to that provided herein on a cents

per ton basis. It is further understood that if such election is exercised all references to cents per ton contributions or obligations arising therefrom in this Article shall be read as to reform such references to the appropriate method of funding.

(i) Into the 1950 Pension Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 95.0¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 95.0¢ per ton on each such ton; and for the period beginning March 27, 1980, and ending when this Agreement is terminated, 95.0¢ per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 35.0¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 35.5¢ per ton on each such ton; and for the period beginning March 27, 1980, and ending when this Agreement is terminated, 35.5¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 75.0¢ per hour on each such hour worked plus 8.5¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 76.0¢ per hour on each such hour worked plus 8.0¢ per ton on each such ton; for the period beginning March 27, 1980, and ending when this Agreement is terminated, 75.0¢ per hour on each such hour worked and 8.0¢ per ton on each such ton.

(iv) Into the 1974 Benefit Trust: for the period beginning on March ....., 1978, and ending on April ....., 1978, 16.5¢ per hour on each such hour worked; for the period beginning on April ....., 1978, and ending when this Agreement is terminated, 2.0¢ per hour on each such hour worked. Any signatory Employer who does not elect to implement coverage through a private insurance carrier(s) on the effective date of the Agreement shall contribute for the period beginning March ....., 1978, and ending May 31, 1978, an additional 86.0¢ per hour on each such hour worked.

(v) In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts shown below include cents per hours worked contributions converted to tonnage equivalents).

(a) Into the 1950 Pension Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 95.0¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 95.0¢ per ton on each such ton; for the period beginning March 27, 1980, and ending when this Agreement is terminated, 95.0¢ per ton on each such ton;

(b) Into the 1950 Benefit Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 35.0¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 35.0¢ per ton on each such ton; for the period beginning March 27, 1980, and ending when this Agreement is terminated, 35.5¢ per ton on each such ton;

(c) Into the 1974 Pension Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 58.5¢ per ton on each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 59.0¢ per ton on each such ton; and for the period beginning March 27, 1980, and ending when this Agreement is terminated, 58.0¢ per ton on each such ton; and

(d) Into the 1974 Benefit Trust: for the period beginning March 27, 1978, and ending March 26, 1979, 1.0¢ per ton for each such ton; for the period beginning March 27, 1979, and ending March 26, 1980, 1.0¢ per ton on each such ton; and for the period beginning March 27, 1980, and ending when this Agreement is terminated, 1.0¢ per ton on each such ton;

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of

competent jurisdiction determines by a final decision that is not appealable that the provision appearing in the paragraph (v) just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

(vi) At any time during the term of this Wage Agreement, the Bituminous Coal Operators' Association may reallocate the contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which reallocations will increase the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the Union, and to the Trustees (who shall in turn notify all contributing Employers) of the cents per ton to be allocated to each such Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) In lieu of or in addition to making the reallocations set forth above, BCOA may, to the extent necessary to fund the benefits provided by the 1950 Benefit Plan and 1974 Benefit Plan during the term of this Agreement, increase the rate of contributions to be made to the 1950 Benefit Trust and 1974 Benefit Trust during the term of this Agreement, which contributions, as may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement. In the event the BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the effective date of this Agreement

has withdrawn prior to the time when such reallocation or adjustment in contributions is to be made to effectuate the guarantee of health benefits, then action to be taken under this Section, or any other Section of this Article requiring action by BCOA, may be taken by a majority vote, based on tonnage, of Employers who were BCOA members on the effective date of this Agreement.

(b) Except as otherwise specifically set forth in this Article, no monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust;

(c) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reasonably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of ERISA, or to fail to satisfy any applicable provisions of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code;

(d) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(e) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts, except to the extent provided for in Section (d)(1)(vi)(a); and

(f) No decrease in the cents per ton to be contributed to the 1950 Benefit Trust shall be adopted which will result in any reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the cents per ton to be contributed to the 1950 Benefit Trust be adopted which

will cause the contributions of the Employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

* * *

GENERAL DESCRIPTION OF THE HEALTH AND RETIREMENT BENEFITS

The following is a general description of certain information contained in the UMWA 1950 Pension and Benefit Plans and Trusts, the UMWA 1974 Pension Plan and Trust and the individual health and benefit plans. This description is intended merely to highlight certain information; it is not a complete statement of all of the provisions of the Plans and Trusts, nor is it intended to be a Summary Plan Description as defined in the Employee Retirement Income Security Act of 1974, and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts, copies of which are on file and available for inspection at the offices of the UMWA Health & Retirement Fund, 2021 K Street, N.W., Washington, D.C.

(1) PENSIONS FOR MINERS RETIRED UNDER THE 1950 PENSION PLAN:

Pension payments for the months of February and March, 1978, will be reinstated at prior levels and payment will be made as soon as possible. The differential between pensioners receiving black lung benefits and those not receiving black lung benefits is eliminated. Beginning on the first of the month following the effective date of this Agreement, pension benefits are according to the following schedules:

(a) For pensioners with at least 20 years of credited service who retired on other than a disability pension and who receive state or federal Black Lung benefits, the pension is immediately increased on the first of the month following the effective date of this Agreement to $275 per month.

(b) For pensioners with at least 20 years of credited service who retired on other than a disability pension and who do not receive state or federal Black Lung benefits, the

pension is immediately increased on the first of the month following the effective date of this Agreement to $275 per month.

(c) For pensioners who retired on a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $130 per month, with a second increase one year later to $135 per month, and a third increase two years later to $137.50 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(d) For pensioners with less than 20 years of credited service, the pension is unchanged from prior levels.

Any pensioner who is receiving a disability pension or a pension with at least twenty years of credited service under this Plan is entitled to receive health benefits until death for each month in which he earns less than $200. As in the case of a pensioner, a widow is entitled to receive health benefits until her death or remarriage for each month in which the widow earns less than $200.

(2) PENSIONS FOR MINERS WHO RETIRED UNDER THE 1974 PENSION PLAN PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT:

Beginning on the first of the month following the effective date of this Agreement, pension benefits for pensioners who retired prior to the effective date of this Agreement are according to the following schedules:

(a) For pensioners who retired on other than a deferred vested or minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement by $10 per month, with a second increase of $10 per month one year later, and a third increase of $5 per month two years later. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(b) For pensioners who retired on a minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $130 per month, with a second increase one year later to $135 per month, and a third increase two years later to $137.50 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(3) PENSIONS FOR MINERS WHO RETIRE ON OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT:

A working miner who retires on or after the effective date of this Agreement and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon the 1974 Pension Plan. Subject to (4) below, full credit is provided for years worked as a classified Employee in mines of signatory Employers.

The earliest retirement age is 55. A miner may retire at 55 with 10 or more years of signatory service.

Pension benefits are increased as a miner accumulates years of signatory service. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

For retirement on or after the effective date of this Agreement the maximum benefit schedule is increased to the following:

- $13.50 per month multiplied by the years of signatory service for the first 10 such years, plus

- $14.00 per month multiplied by the years of signatory service for the second 10 such years, plus

- $14.50 per month multiplied by the years of signatory service for the third 10 such years, plus

• $15.00 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 20.

* * *

(10) HEALTH CARE:

Health benefits are restored for all beneficiaries defined as eligible under the 1950 and 1974 Benefit Plans and Trusts for services rendered on and after the effective date of this Agreement. Such benefits are guaranteed during the term of this Agreement, subject to the terms of this Agreement, at the level of benefits provided in the prior Agreement subject to the following:

(a) Participants in the 1950 Benefit Plan will continue to have their health benefits provided by the UMWA Health and Retirement Funds' 1950 Benefit Plan and Trust. Upon request, the Participant shall receive a copy of the bill for services rendered by the physician, hospital, or clinic.

(b) Working miners will be provided health benefits through their individual Employers, or, until May 31, 1978, through the 1974 Benefit Plan and Trust.

(c) Pensioners, other than deferred vested pensioners with less than 20 years of service, retired under the 1974 Pension Plan will be provided health benefits through the Employer from which they retired.

(d) Pensioners, both regular and disabled, their surviving spouses and dependents, who retired under the 1974 Pension Plan or any successor thereto, whose last classified employment was with a signatory Employer, (including successors and assigns) which is no longer in business will have benefits provided under the 1974 Benefit Plan and Trust.

(e) For new Employees and their dependents, no pregnancy benefits will be provided for a pregnancy which occurs prior to the first day of employment. All other benefits are covered.

(f) Benefits for prescription drugs will be subject to a $5.00 co-payment per prescription up to a $50 annual maximum per family.

(g) Benefits for office visits to physicians, house calls by physicians, in-hospital medical care, visits to a clinic or the out-patient department of a hospital will be subject to a $7.50 per visit co-payment in the case of working miners and their dependents up to an annual maximum of $150 per family and will be subject to a $5.00 per visit co-payment in the case of retired miners (and Surviving Spouses) and their dependents up to an annual maximum of $100 per family.

(h) Spouses of working miners who died, who are not eligible for Surviving Spouse pension benefits, will continue eligibility for health care until remarriage, or for 60 months, whichever occurs first.

(i) Deferred vested pensioners with less than 20 years of service under the 1974 Pension Plan and miners who will receive a pension with less than 20 years of service under the 1950 Pension Plan are ineligible for health care. Disability pensioners under both the 1950 and 1974 Pension Plans will continue to receive their Health Services card.

(j) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

Explanatory Note on Employer Provided Health Plans

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A new health services card identifying the Participant's eligibility for benefits under the health plan will be provided by the Employer as soon as possible. In the meantime, the existing Health Services card will be honored.

The Trustees of the UMWA Health and Retirement Funds will resolve any disputes to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1981

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (a) **General Purpose**

This Article makes provision for pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts referred to in Sections (b) and (c) of this Article.

A general description of the benefits to be provided appears immediately following this Article. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the benefit program established under the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust has assumed the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from the 1950 Benefit Trust, the 1974 Benefit Trust, or the individual benefit plans referred to in Section (c).

The general purpose of the plans referred to in this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; health care and financial support for eligible disabled miners; and financial support for surviving spouses and surviving dependents provided by each of the Trusts and Plans referred to in this Article.

Except as otherwise specifically set forth in this Article, it is agreed that the Trusts referred to in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and shall endure as long as the purposes for their creation shall exist.

Section (b) **1950 Plans and Trusts**

The United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust") is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund have heretofore been amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

The United Mine Workers of America 1950 Benefit Plan and Trust ("1950 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) **1974 Plans and Trusts**

(1) The United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust") is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and was effective December 6, 1974.

(2) The 1974 Benefit Plan and Trust ("1974 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides certain health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1974 Benefit Trust and under the terms of this Article.

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans

established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax pur-

poses of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

Section (d) **Contributions by Employers**

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal produced by such Employer for use or for sale, and, in addition, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per hours worked by each of the Employer's Employees who perform classified work under this Agreement.

BCOA may elect to change or convert the cents per ton basis of funding contained herein to a different method of funding so long as such alternate method produces the equivalent contribution to that provided herein on a cents per ton basis. It is further understood that if such election is exercised all references to cents per ton contributions or obligations arising therefrom in this Article shall be read as to reform such references to the appropriate method of funding.

(i) Into the 1950 Pension Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 95.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, $1.11 per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated, $1.11 per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 40.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, 40.0¢ per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated, 41.0¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning June 7, 1981, and ending June 6, 1982, $1.037 per hour on each such hour worked plus 8.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, 99.7¢ per hour on each such hour worked plus 8.0¢ per ton on each such ton; for the period beginning June 7, 1983, and ending when this Agreement is terminated, $1.017 per hour on each such hour worked plus 8.0¢ per ton on each such ton.

(iv) Into the 1974 Benefit Trust: for the period beginning on June 7, 1981, and ending when this Agreement is terminated, 0.0¢ per hour on each such hour worked.

(v) In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts shown below include cents per hours worked contributions converted to tonnage equivalents).

(a) Into the 1950 Pension Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 95.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, $1.11 per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated, $1.11 per ton on each such ton;

(b) Into the 1950 Benefit Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 40.0¢ per ton on each such ton; for the period beginning June 7, 1982, and ending June 6, 1983, 40.0¢ per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated, 41.0¢ per ton on each such ton;

(c) Into the 1974 Pension Trust: for the period beginning June 7, 1981, and ending June 6, 1982, 72.8¢ per ton on each

such ton; for the period beginning June 7, 1982, and ending June 6, 1983, 70.3¢ per ton on each such ton; and for the period beginning June 7, 1983, and ending when this Agreement is terminated 71.6¢ per ton on each such ton; and

(d) Into the 1974 Benefit Trust: for the period beginning June 7, 1981, and ending when this Agreement is terminated, 0.0¢ per ton on each such ton.

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of competent jurisdiction determines by a final decision that is not appealable that the provision appearing in paragraph (v) just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Coal Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

(vi) At any time during the term of this Wage Agreement, the Bituminous Coal Operators' Association may reallocate the contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which reallocations will increase the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the Union, and to the Trustees (who shall in turn notify all contributing Employers) of the cents per ton to be allocated to each such Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) In lieu of or in addition to making the reallocations set forth above, BCOA may, to the extent necessary to fund the benefits provided by the 1950 Benefit Plan and 1974 Benefit Plan during the term of this Agreement, increase the rate of contributions to be made to the 1950 Benefit Trust and 1974 Benefit Trust during the term of this Agreement, which contributions, as may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement. In the event the BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the effective date of this Agreement has withdrawn prior to the time when such reallocation or adjustment in contributions is to be made to effectuate the guarantee of health benefits, then action to be taken under this Section, or any other Section of this Article requiring action by BCOA, may be taken by a majority vote, based on tonnage, of Employers who were BCOA members on the effective date of this Agreement.

(b) Except as otherwise specifically set forth in this Article, no monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust;

(c) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reasonably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of ERISA, or to fail to satisfy any applicable provisions of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code;

(d) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(e) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts, except to the extent provided for in Section (d)(1)(vi)(a); and

(f) No decrease in the cents per ton to be contributed to the 1950 Benefit Trust shall be adopted which will result in any reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the cents per ton to be contributed to the 1950 Benefit Trust be adopted which will cause the contributions of the Employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

* * *

GENERAL DESCRIPTION OF THE HEALTH AND RETIREMENT BENEFITS

The following is a general description of certain information contained in the UMWA 1950 Pension and Benefit Plans and Trusts, the UMWA 1974 Pension Plan and Trust and the individual Employer's benefit plans. This description is intended merely to highlight certain information; it is not a complete statement of all of the provisions of the plans and Trusts, nor is it intended to be a Summary Plan Description as defined in the Employee Retirement Income Security Act of 1974, and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts, copies of which are on file and available for inspection at the offices of the UMWA Health & Retirement Fund, 2021 K Street, N.W., Washington, D.C. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

(1) PENSIONS FOR MINERS RETIRED UNDER THE 1950 PENSION PLAN:

Beginning on the first of the month following the effective date of this Agreement, pension benefits are according to the following schedules:

(a) For pensioners with at least 20 years of credited service who retired on other than a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $290 per month, with a second increase one year later to $305 per month, and a third increase two years later to $315 per month.

(b) For pensioners who retired on a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $147.50 per month, with a second increase one year later to $152.50 per month, and a third increase two years later to $157.50 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

Any pensioner who is receiving a disability pension or a pension with at least twenty years of credited service under this Plan is entitled to receive health benefits until death except during any month in which he is regularly employed at an earnings rate equivalent to at least $500 per month. A widow is entitled to receive health benefits until her death or remarriage subject to the same $500 earnings limit.

(1A) 1950 WIDOWS PENSION

A new benefit will be provided through the 1950 Pension Plan to widows of miners who were receiving a 1950 pension at the time of their death. The benefit will begin March 1, 1982 and will be $95 per month. Existing as well as future widows of 1950 Pensioners will receive this benefit.

(2) PENSIONS FOR MINERS WHO RETIRED UNDER THE 1974 PENSION PLAN PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT:

Beginning on the first of the month following the effective date of this Agreement, pension benefits for pensioners who retired prior to the effective date of this Agreement are according to the following schedules:

(a) For pensioners who retired on other than a deferred vested or minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement by $10 per month, with a second increase of $10 per month one year later, and a third increase of $5 per month two years later. Such pensioner will be entitled to retain his Health Services card for life, subject to the $500 earnings limit. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

(b) For pensioners who retired on a minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $142.50 per month, with a second increase one year later to $147.50 per month, and a third increase two years later to $150.00 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

(3) PENSIONS FOR MINERS WHO RETIRE ON OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT:

A working miner who retires on or after the effective date of this Agreement and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon the 1974 Pension Plan. Subject to (4) below, full credit is provided for years worked as a classified Employee in mines of signatory Employers.

The earliest retirement age is 55. A miner may retire at 55 with 10 or more years of signatory service.

Pension benefits are increased as a miner accumulates years of signatory service. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

For retirement during the first two years of this Agree-

ment the maximum benefit schedule is increased to the following:

- $14.50 per month multiplied by the years of signatory service for the first 10 such years, plus
- $15.00 per month multiplied by the years of signatory service for the second 10 such years, plus
- $15.50 per month multiplied by the years of signatory service for the third 10 such years, plus
- $16.00 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 19.

For retirement during the third year of this Agreement, the maximum benefit schedule is increased to the following:

- $15.50 per month multiplied by the years of signatory service for the first 10 such years, plus
- $16.00 per month multiplied by the years of signatory service for the second 10 such years, plus
- $16.50 per month multiplied by the years of signatory service for the third 10 years, plus
- $17.00 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 19.

* * *

(10) HEALTH CARE:

Health care benefits are guaranteed during the term of this Agreement, subject to the terms of this Agreement at the level of benefits provided in the 1950 Benefit Plan, 1974 Benefit Plan, and the Employer Benefit Plan.

(a) Participants in the 1950 Benefit Plan will continue to have their health benefits provided by the UMWA Health and Retirement Funds' 1950 Benefit Plan and Trust. The Participant shall receive an Explanation of Benefits (EOB) for services rendered by the physician, hospital, or clinic.

(b) Working miners will be provided health benefits through their individual Employer's benefit plan.

(c) Pensioners, other than deferred vested pensioners with less than 20 years of service, retired under the 1974 Pension Plan will be provided health benefits through the Employer from which they retired.

(d) Pensioners, both regular and disabled, their surviving spouses and dependents, who retired under the 1974 Pension Plan or any successor thereto, whose last signatory classified employment was with a signatory Employer, (including successors and assigns) which is no longer in business will have benefits provided under the 1974 Benefit Plan and Trust.

(e) Pregnancy benefits will be provided in the same manner as for any other disability.

(f) Only benefits for prescription drugs (only those drugs requiring a prescription for dispensing) are provided; they will be subject to a $5.00 co-payment per prescription up to a $50 annual maximum per family.

(g) Benefits for office visits to physicians, house calls by physicians, in-hospital medical care, visits to a clinic or the out-patient department of a hospital will be subject to a $7.50 per visit co-payment in the case of working miners and their dependents up to an annual maximum of $150 per family and will be subject to a $5.00 per visit co-payment in the case of retired miners (and Surviving Spouses) and their dependents up to an annual maximum of $100 per family.

(h) Spouses of working miners who died, who are not eligible for Surviving Spouse pension benefits, will continue eligibility for health care until remarriage, or for 60 months, whichever occurs first, subject to the $500 earnings limit.

(i) Deferred vested pensioners with less than 20 years of service under the 1974 Pension Plan and miners who will receive a pension with less than 20 years of service under the 1950 Pension Plan are ineligible for health care. Disability pensioners under both the 1950 and 1974 Pension Plans will continue to receive their Health Services card.

(j) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

Explanatory Note on Employer Provided Health Plans

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A health services card identifying the Participant's eligibility for benefits under the health plan shall be provided by the Employer.

The Trustees of the UMWA Health and Retirement Funds will resolve any disputes to assure consistent application of the health plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.

* * *

NATIONAL BITUMINOUS COAL WAGE AGREEMENT OF 1984

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (a) **General Purpose**

This Article makes provision of pension, health and other benefits for Employees covered by this Agreement, and for former Employees who were covered under the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 Fund"), and for the spouses and dependents of such Employees. The benefits to be provided are as set forth under separate plans and trusts referred to in Sections (b) and (c) of this Article.

A general description of the benefits to be provided appears immediately following this Article. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

For purposes of this Article, the 1950 Pension Plan and Trust, the 1974 Pension Plan and Trust, the 1950 Benefit Plan and Trust and the 1974 Benefit Plan and Trust and each of them shall be a continuation of the benefit program established under the UMWA Welfare and Retirement Fund of 1950 (hereinafter the 1950 Fund) provided that:

(1) The 1950 Pension Trust shall be solely responsible for all indebtedness, accounts payable, claims, causes of action and other liabilities (except as provided in (2) below) incurred or arising prior to December 6, 1974, and shall likewise be entitled and shall succeed to all assets held in trust by the 1950 Fund and all assets due the 1950 Fund on said date and to all rights heretofore accruing to or exercisable by the 1950 Fund;

(2) For all participants covered by the 1974 Pension Plan and Trust, the 1974 Pension Trust has assumed the liabilities for pensions including those arising out of past service credits attributable to employment prior to December 6, 1975.

Each participant and beneficiary shall be entitled only to the pension benefits provided in and paid from either the 1950 Pension Plan and Trust or the 1974 Pension Plan and Trust and each participant, beneficiary and dependent shall be entitled only to the benefits provided in and paid from the 1950 Benefit Trust, the 1974 Benefit Trust, or the individual benefit plans referred to in Section (c).

The general purpose of the plans referred to in this Article shall be to provide health care for working and retired miners and their dependents; pensions for miners upon their retirement; health care and financial support for eligible disabled miners; and financial support for surviving spouses and surviving dependents provided by each of the Trusts and Plans referred to in this Article.

Except as otherwise specifically set forth in this Article, it is agreed that the Trusts referred to in this Article are irrevocable Trusts created pursuant to, and within the scope of, Section 302(c) of the Labor-Management Relations Act, 1947, and shall endure as long as the purposes for their creation shall exist.

Section (b) **1950 Plans and Trusts**

The United Mine Workers of America 1950 Pension Trust ("1950 Pension Trust") is incorporated by reference and made a part of this Agreement. The terms of the 1950 Fund have heretofore been amended by substituting the terms of the 1950 Pension Trust and of the United Mine Workers of America 1950 Pension Plan ("1950 Pension Plan"). The 1950 Pension Plan is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1950 Pension Trust are as set forth in the 1950 Pension Plan.

The United Mine Workers of America 1950 Benefit Plan and Trust ("1950 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1950 Benefit Trust provides health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be provided are as set forth in the plan under the 1950 Benefit Trust.

Upon the discharge of all its obligations, any remaining assets in either the 1950 Benefit Trust or the 1950 Pension Trust shall, upon termination of such Trusts, be transferred to the 1974 Benefit or Pension Trusts, respectively.

Section (c) **1974 Plans and Trusts**

(1) The United Mine Workers of America 1974 Pension Trust ("1974 Pension Trust") is incorporated by reference and made a part of this Agreement. The pensions to be paid from the 1974 Pension Trust are as set forth in the United Mine Workers of America 1974 Pension Plan ("1974 Pension Plan"), which is incorporated by reference and made a part of this Agreement. This Plan is a continuation of the pension program of the 1950 Fund and was effective December 6, 1974.

(2) The 1974 Benefit Plan and Trust ("1974 Benefit Trust") is incorporated by reference and made a part of this Agreement. The 1974 Benefit Trust provides certain health and other benefits, not including pension benefits, and the terms and conditions under which those benefits will be

provided are as set forth in the plan under the 1974 Benefit Trust and under the terms of this Article.

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

Section (d) **Contributions by Employers**

(1) During the life of this Agreement, for the periods of time indicated below, each signatory Employer engaged in the production of coal shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal produced by such Employer for use or for sale, and, in addition, each signatory Employer (including those engaged in the production of coal and those not engaged in the production of coal) shall contribute to the Trusts referred to in this Article the amounts specified below based on cents per hours worked by each of the Employer's Employees who perform classified work under this Agreement.

BCOA may elect to change or convert the cents per ton basis of funding contained herein to a different method of funding so long as such alternate method produces the

equivalent contribution to that provided herein on a cents per ton basis. It is further understood that if such election is exercised all references to cents per ton contributions or obligations arising therefrom in this Article shall be read as to reform such references to the appropriate method of funding.

(i) Into the 1950 Pension Trust: for the period beginning October 1, 1984, and ending when this Agreement is terminated, $1.11 per ton on each such ton;

(ii) Into the 1950 Benefit Trust: for the period beginning October 1, 1984, and ending September 30, 1986, 61.0¢ per ton on each such ton; and for the period beginning October 1, 1986, and ending when this Agreement is terminated, 64.0¢ per ton on each such ton;

(iii) Into the 1974 Pension Trust: for the period beginning October 1, 1984, and ending September 30, 1985, $1.03 per hour on each such hour worked plus 7.0¢ per ton on each such ton; for the period beginning October 1, 1985, and ending September 30, 1986, 97.0¢ per hour on each such hour worked plus 6.6¢ per ton on each such ton; for the period beginning October 1, 1986, and ending September 30, 1987, 97.0¢ per hour on each such hour worked plus 6.6¢ per ton on each such ton; for the period beginning October 1, 1987, and ending when this Agreement is termianted, $1.02 per hour on each such hour worked plus 6.6¢ per ton on each such ton.

(iv) Into the 1974 Benefit Trust: for the period beginning October 1, 1984, and ending when this Agreement is terminated, 0.0¢ per hour on each such hour worked.

(v) In addition to the contributions indicated above, during the life of the Agreement, each signatory Employer shall, for the periods of time indicated below, contribute to the Trusts established in this Article in the amounts shown below based on cents per ton on each ton of two thousand (2,000) pounds of bituminous coal after production by another operator, procured or acquired by such Employer for use or for sale on which contributions to the appropriate Trusts as provided for in this Article have not been made (amounts

shown below include cents per hours worked contributions converted to tonnage equivalents).

(a) Into the 1950 Pension Trust: for the period beginning October 1, 1984, and ending when this Agreement is terminated, $1.11 per ton on each such ton;

(b) Into the 1950 Benefit Trust: for the period beginning October 1, 1984, and ending September 30, 1986, 61.0¢ per ton on each such ton; and for the period beginning October 1, 1986, and ending when this Agreement is terminated, 64.0¢ per ton on each such ton;

(c) Into the 1974 Pension Trust: for the period beginning October 1, 1984, and ending September 30, 1985, 52.7¢ per ton on each such ton; for the period beginning October 1, 1985, and ending September 30, 1986, 49.1¢ per ton on each such ton; and for the period beginning October 1, 1986, and ending September 30, 1987, 48.7¢ per ton on each such ton; and for the period beginning October 1, 1987, and ending when this Agreement is terminated 50.8¢ per ton on each such ton; and

(d) Into the 1974 Benefit Trust; for the period beginning October 1, 1984, and ending when this Agreement is terminated, 0.0¢ per ton on each such ton.

The parties hereto mutually agree that, if at any time during the term of this Agreement a court or tribunal of competent jurisdiction determines by a final decision that is not appealable that the provision appearing in the paragraph (v) just preceding is invalid or in violation of the National Labor Relations Act, 1947, as amended, or other Federal or state law, the parties shall, at the option of and upon demand by the Union without affecting the integrity of any other provision of this Section or any other provision of the National Bituminous Wage Agreement, meet and engage in good faith negotiations to agree upon a clause to be inserted into this Agreement in replacement of the provision found invalid or unlawful.

(vi) At any time during the term of this Wage Agreement, the Bituminous Coal Operators' Association may real-

locate the contributions to be paid under the respective subdivisions (i) and (ii) in this Section, which reallocation will increase the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will decrease the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, or which will decrease the cents per ton to be contributed into the 1950 Pension Trust and correspondingly will increase the cents per ton to be contributed by the Employers into the 1950 Benefit Trust, provided that notice shall be given to the Union, and to the Trustees (who shall in turn notify all contributing Employers) of the cents per ton to be allocated to each such Trust at least 30 days prior to the date the contributions become due and owing to the respective Trusts, subject to the following terms and conditions:

(a) In lieu of or in addition to making the reallocations set forth above, BCOA may, to the extent necessary to fund the benefits provided by the 1950 Benefit Plan and 1974 Benefit Plan during the term of this Agreement, increase the rate of contributions to be made to the 1950 Benefit Trust and 1974 Benefit Trust during the term of this Agreement, which contributions, as may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement. In the event the BCOA ceases to exist, or in the event that more than 50% of the tonnage membership of BCOA on the effective date of this Agreement has withdrawn prior to the time when such reallocation or adjustment in contributions is to be made to effectuate the guarantee of health benefits, then action to be taken under this Section, or any other Section of this Article requiring action by BCOA, may be taken by a majority vote, based on tonnage, of Employers who were BCOA members on the effective date of this Agreement.

(b) Except as otherwise specifically set forth in this Article, no monies previously paid into or due and owing to either Trust nor any assets of either Trust shall be transferred to the other Trust;

(c) No decrease in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which can reason-

ably be expected to cause the 1950 Pension Trust and Pension Plan to fail to meet the minimum funding standards set forth in Section 302 of Title I, Subtitle B, Part 3, of ERISA or Section 1013 of Title II, Subtitle A, Part I of ERISA, or to fail to satisfy any applicable provisions of the Internal Revenue Code of 1954, including Sections 401 and 501 of said Code;

(d) No increase in the cents per ton to be contributed to the 1950 Pension Trust shall be adopted which will increase the contributions of the Employers to such Trust to an amount in excess of those amounts which, for Federal income tax purposes, are fully deductible by said Employers when paid into such Trust, pursuant to the provisions of the Internal Revenue Code of 1954;

(e) No reallocation of the contributions to be paid to the two Trusts shall be made which will increase the total combined contributions required by this Article to be made by the Employers to those two Trusts, except to the extent provided for in Section (d)(1)(vi)(a); and

(f) No decrease in the cents per ton to be contributed to the 1950 Benefit Trust shall be adopted which will result in any reduction of the benefits currently provided in the 1950 Benefit Trust, nor shall any change in the cents per ton to be contributed to the 1950 Benefit Trust be adopted which will cause the contributions of the Employers to such Trust not to be fully deductible as paid or accrued under the applicable provisions of the Internal Revenue Code of 1954.

* * *

GENERAL DESCRIPTION OF THE HEALTH AND RETIREMENT BENEFITS

The following is a general description of certain information contained in the UMWA 1950 Pension and Benefit Plans and Trusts, the UMWA 1974 Pension Plan and Trust and the individual health and benefit plans. This description is intended merely to highlight certain information; it is not a complete statement of all of the provisions of the Plans and Trusts, nor is it intended to be a Summary Plan Description as defined in the Employee Retirement Income Security Act

of 1974, and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts, copies of which are on file and available for inspection at the offices of the UMWA Health & Retirement Fund, 2021 K Street, N.W., Washington, D.C. The specific provisions of the plans will govern in the event of any inconsistencies between the general description and the plans.

(1) PENSIONS FOR MINERS RETIRED UNDER THE 1950 PENSION PLAN:

Beginning on the first of the month following the effective date of this Agreement, pension benefits are according to the following schedules:

(a) For pensioners with at least 20 years of credited service who retired on other than a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $325 per month, with a second increase effective October 1, 1987, to $335 per month.

(b) For pensioners who retired on a disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $167.50 per month, with a second increase effective October 1, 1987, to $177.50 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage.

Any pensioner who is receiving a disability pension or a pension with at least twenty years of credited service under this Plan is entitled to receive health benefits until death except during any month in which he is regularly employed at an earnings rate equivalent to at least $500 per month. A widow is entitled to receive health benefits until her death or remarriage subject to the same $500 earnings limit.

(1A) 1950 WIDOWS PENSION

A Widow's Pension is provided through the 1950 Pension Plan to widows of miners who were receiving a 1950 pension

at the time of their death. The benefit is immediately increased to $100 per month with a second increase effective October 1, 1987, to $105 per month. Existing as well as future widows of 1950 Pensioners will receive this benefit.

(2) PENSIONS FOR MINERS WHO RETIRED UNDER THE 1974 PENSION PLAN PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT:

Beginning on the first of the month following the effective date of this Agreement, pension benefits for pensioners who retired prior to the effective date of this Agreement are according to the following schedules:

(a) For pensioners who retired on other than a deferred vested or minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement by $10 per month, with a second increase of $10 per month effective October 1, 1987. Such pensioner will be entitled to retain his Health Services card for life, subject to the $500 earnings limit. Upon his death, his widow will retain a Health Services card until her death or remarriage.

(b) For pensioners who retired on a minimum disability pension, the pension is immediately increased on the first of the month following the effective date of this Agreement to $160.00 per month, with a second increase effective October 1, 1987, to $170.00 per month. Such pensioner will be entitled to retain his Health Services card for life. Upon his death, his widow will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

(c) For surviving spouses of 1974 pensioners who retired on other than a deferred vested pension, the benefit is immediately increased by $5.00 per month, with a second increase of $5.00 per month effective October 1, 1987. Such surviving spouse will retain a Health Services card until her death or remarriage, subject to the $500 earnings limit.

(3) PENSIONS FOR MINERS WHO RETIRE ON OR AFTER THE EFFECTIVE DATE OF THIS AGREEMENT:

A working miner who retires on or after the effective date of this Agreement and who is eligible for a pension under the terms of this Agreement will receive pension benefits based upon the 1974 Pension Plan. Subject to (4) below, full credit is provided for years worked as a classified Employee in mines of signatorty Employers.

The earliest retirement age is 55. A miner may retire at 55 with 10 or more years of signatory service.

Pension benefits are increased as a miner accumulates years of signatory service. Benefits are also increased based upon a miner's age at the time of retirement with maximum benefits payable to miners who retire at the age of 62 or more.

For retirement during the first two years of this Agreement the maximum benefit schedule is increased to the following:

- $16.50 per month multiplied by the years of signatory service for the first 10 such years, plus
- $17.00 per month multiplied by the years of signatory service for the second 10 such years, plus
- $17.50 per month multiplied by the years of signatory service for the third 10 such years, plus
- $18.00 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 19.

For retirement on or after October 1, 1987, the maximum benefit schedule is increased to the following:

- $17.00 per month multiplied by the years of signatory service for the first 10 such years, plus
- $17.50 per month multiplied by the years of signatory service for the second 10 such years, plus

• $18.00 per month multiplied by the years of signatory service for the third 10 years, plus

• $18.50 per month multiplied by the years of signatory service for each such year over 30.

To estimate your pension, use the table on page 19.

* * *

(10) HEALTH CARE:

Health care benefits are guaranteed during the term of this Agreement, subject to the term of this Agreement at the level of benefits provided in the 1950 Benefit Plan, 1974 Benefit Plan, and the Employer Benefit Plan.

(a) Participants in the 1950 Benefit Plan will continue to have their health benefits provided by the UMWA Health and Retirement Funds' 1950 Benefit Plan and Trust. The Participant shall receive an Explanation of Benefits (EOB) for services rendered by the physician, hospital, or clinic.

(b) Working miners will be provided health benefits through their individual Employer's benefit plan.

(c) Pensioners, other than deferred vested pensioners with less than 20 years of service, retired under the 1974 Pension Plan will be provided health benefits through the Employer from which they retired.

(d) Pensioners, both regular and disabled, their surviving spouses and dependents, who retired under the 1974 Pension Plan or any successor thereto, whose last signatory classified employment was with a signatory Employer, (including successors and assigns) which is no longer in business will have benefits provided under the 1974 Benefit Plan and Trust.

(e) Pregnancy benefits will be provided in the same manner as for any other disability.

(f) Only benefits for prescription drugs (only those drugs requiring a prescription for dispensing) are provided; they will be subject to a $5.00 co-payment per prescription up to a $50 annual maximum per family.

(g) Benefits for office visits to physicians, house calls by physicians, in-hospital medical care, visits to a clinic or the out-patient department of a hospital will be subject to a $7.50 per visit co-payment in the case of working miners and their dependents up to an annual maximum of $150 per family and will be subject to a $5.00 per visit co-payment in the case of retired miners (and Surviving Spouses) and their dependents up to an annual maximum of $100 per family.

(h) Spouses of working miners who died, who are not eligible for Surviving Spouse pension benefits, will continue eligibility for health care until remarriage, or for 60 months, whichever occurs first.

(i) Deferred vested pensioners with less than 20 years of service under the 1974 Pension Plan and miners who will receive a pension with less than 20 years of service under the 1950 Pension Plan are ineligible for health care. Disability pensioners under both the 1950 and 1974 Pension Plans will continue to receive their Health Services card.

(j) Disabled or retarded children of Health Services cardholders will be covered for life, so long as a surviving parent holds the card.

Explanatory Note on Employer Provided Health Plans

Active miners and their surviving spouses and dependents, and pensioners, their dependents, and surviving spouses receiving pensions from the 1974 Pension Plan, will receive health care provided by their Employer through insurance carriers. A health services card identifying the Participant's eligibility for benefits under the health plan will be provided by the Employer.

The Trustees of the UMWA Health and Retirement Funds shall resolve any disputes including excessive fee disputes, to assure consistent application of the Plan provisions which are identical to the benefit provisions of the 1950 Benefit Plan and Trust.

* * *

UMWA PROPOSAL
AUG. _____, 1984

OLD LANGUAGE

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (c) **1974 Plans and Trusts**

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented through an insurance carrier(s), health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plans(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitle-

ment shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses.

The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

NEW LANGUAGE

Article XX—HEALTH AND RETIREMENT BENEFITS

Section (c) **1974 Plans and Trusts**

(3)(i) Each signatory Employer shall establish and maintain an Employee benefit plan to provide, implemented

through [an] a *single* insurance carrier[s] *(designated by the Union and Employers)*, health and other non-pension benefits for its Employees covered by this Agreement as well as pensioners, under the 1974 Pension Plan and Trust, whose last signatory classified employment was with such Employer. The benefits provided by the Employer to its eligible Participants pursuant to such plans shall be guaranteed during the term of this Agreement by that Employer at levels set forth in such plans. Such plans shall also include that each signatory Employer continue to make the death benefit payments in pay status as of December 5, 1977, for deceased Employees and pensioners under the 1974 Pension Plan whose last signatory classified employment was with such Employer, in the same manner and in the same amounts as previously provided for in the 1974 Benefit Plan and Trust. *Health and other non-pension benefits shall be vested for life for all pensioners who are receiving such benefits or who will become eligible to receive such benefits under an Employee Benefit Plan from an Employer who no longer has an obligation to contribute to the 1974 Pension Plan unless a successor or assign assumes the obligation for payment of such benefits. Such entitlement for lifetime benefits shall extend to surviving spouses and other beneficiaries who are eligible for such benefits as a result of their relationship to a pensioner described above. In the event such an Employer or its successors or assigns shall subsequently go out of business the 1974 Benefit Plan & Trust shall provide such benefits to said pensioners, surviving spouses and other beneficiaries, pursuant to (ii) below.* The plans established pursuant to this subsection are incorporated by reference and made a part of this Agreement, and the terms and conditions under which the health and other non-pension benefits will be provided under such plans are as to be set forth in such plans.

(ii) The 1974 Benefit Plan and Trust provides health and other non-pension benefits, during the term of this Agreement, to any retired miner under the 1974 Pension Plan or any successor plan(s) thereto who would otherwise cease to receive the health and other non-pension benefits provided herein because the signatory Employer (including successors

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and assigns) for whom such miner last worked in signatory classified employment is no longer in business. Such entitlement shall extend to surviving spouses and other beneficiaries who are eligible for health coverage as a result of their relationship to such a miner whose last signatory classified employment was with a signatory Employer which is no longer in business. For purposes of determining eligibility under the 1974 Benefit Plan and Trust, an Employer is considered to be "no longer in business" only if the Employer:

(a) has ceased all mining operations and has ceased employing persons under this Wage Agreement, with no reasonable expectation that such operations will start up again; and

(b) is financially unable (through either the business entity that has ceased operations as described in subparagraph (a) above, including such company's successors or assigns, if any, or any other related division, subsidiary, or parent corporation, regardless of whether covered by this Wage Agreement or not) to provide health and other non-pension benefits to its retired miners and surviving spouses. *Notwithstanding the above, if a pensioner, Employee or the Funds has no express statutory or case-law defined right of recovery with a reasonable prospect of recovery from said entities, the Employer shall be deemed "no longer in business."*

In order to ensure continuous coverage pending a determination of eligibility in out-of-business cases, the Trustees shall make available these health and other non-pension benefits through the 1974 Benefit Plan & Trust to eligible pensioners, Employees, surviving spouses, and dependents of Employers who are in bankruptcy under Chapter 7 or 11 of the Federal Bankruptcy Code. Such coverage shall be made available as soon as any filing for bankruptcy has been entered, contingent on each pensioner, Employee or surviving spouse making an assignment of his claim for said benefits against the Employer to the Funds.

The Trustees shall reconsider all "out of business" determinations made pursuant to the provisions of the NBCWA of 1981 under the criteria established herein.

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The Union and Trustees shall assist and fully cooperate with the Employers in obtaining all necessary opinion letters, exemptions, or rulings from the Department of Labor, the Internal Revenue Service or other applicable federal agencies, in order to implement the provisions of this subsection so as to ensure compliance with all applicable federal laws and regulations and ensure the deductibility for income tax purposes of any and all contributions made by signatory Employers to the 1974 Benefit Trust and the individual health plans referred to in this Section.

STATUTES INVOLVED

National Labor Relations Act, Section 8(d)

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

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(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2)–(4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 158 to 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

29 U.S.C. § 158(d)

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Employee Retirement Income Security Act of 1974, Sections 402 and 404

ESTABLISHMENT OF PLAN

Sec. 402. (a)(1) Every employee benefit plan shall be established and maintained pursuant to a written instrument. Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan.

(2) For purposes of this title, the term "named fiduciary" means a fiduciary who is named in the plan instrument, or who, pursuant to a procedure specified in the plan, is identified as a fiduciary (A) by a person who is an employer or employee organization with respect to the plan or (B) by such an employer and such an employee organization acting jointly.

(b) Every employee benefit plan shall—

(1) provide a procedure for establishing and carrying out a funding policy and method consistent with the objectives of the plan and the requirements of this title,

(2) describe any procedure under the plan for the allocation of responsibilities for the operation and administration of the plan (including any procedure described in section 405(c)(1)),

(3) provide a procedure for amending such plan, and for identifying the persons who have authority to amend the plan, and

(4) specify the basis on which payments are made to and from the plan.

(c) Any employee benefit plan may provide—

(1) that any person or group of persons may serve in more than one fiduciary capacity with respect to the plan (including service both as trustee and administrator);

(2) that a named fiduciary, or a fiduciary designated by a named fiduciary pursuant to a plan procedure described in

section 405(c)(1), may employ one or more persons to render advice with regard to any responsibility such fiduciary has under the plan; or

(3) that a person who is a named fiduciary with respect to control or management of the assets of the plan may appoint an investment manager or managers to manage (including the power to acquire and dispose of) any assets of a plan.

29 U.S.C. § 1102

FIDUCIARY DUTIES

Sec. 404. (a)(1) Subject to sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title or title IV.

(2) In the case of an eligible individual account plan (as defined in section 407(d)(3)), the diversification requirement of paragraph (1)(C) and the prudence requirement (only to the extent that it requires diversification) of paragraph (1)(B)

is not violated by acquisition or holding of qualifying employer real property or qualifying employer securities (as defined in section 407(d)(4) and (5)).

(b) Except as authorized by the Secretary by regulation, no fiduciary may maintain the indicia of ownership of any assets of a plan outside the jurisdiction of the district courts of the United States.

(c) In the case of a pension plan which provides for individual accounts and permits a participant or beneficiary to exercise control over assets in his account, if a participant or beneficiary exercises control over the assets in his account (as determined under regulations of the Secretary)—

(1) such participant or beneficiary shall not be deemed to be a fiduciary by reason of such exercise, and

(2) no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, which results from such participant's, or beneficiary's exercise of control.

29 U.S.C. § 1104

No. 87-1185

(3)

Supreme Court, U.S.
FILED
FEB 12 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA,
AND HERSCHEL HENSON,
Respondents.

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA;
LOCAL UNION 5821;
LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA;
GARLAND WALKUP, RETIREE;
MADELINE R. THOMAS, WIDOW;
JOSEPH M. HANSHEW, DISABLED RETIREE;
JOHN DOE; MARY DOE,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF BITUMINOUS COAL OPERATORS' ASSOCIATION, INC. AS AMICUS CURIAE IN SUPPORT OF THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST'S PETITION FOR A WRIT OF CERTIORARI

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TABLE OF CONTENTS

SUBJECT INDEX

	Page
INTRODUCTION	2
INTEREST OF AMICUS CURIAE	2
BACKGROUND	4
SUMMARY OF ARGUMENT	6
ARGUMENT	9
THE WRIT SHOULD BE GRANTED AND THE FOURTH CIRCUIT'S DECISION REVERSED TO PREVENT OTHER COURTS FROM RELYING THEREON IN MEASURING COLLECTIVELY BARGAINED COMPROMISES BY JUDICIALLY IMPOSED STANDARDS OF REASONABLENESS	9
THE WRIT SHOULD BE GRANTED BECAUSE THE FOURTH CIRCUIT'S OPINION DOES VIOLENCE TO BOTH THE PLAIN LANGAUGE AND THE CONGRESSIONAL INTENT UNDERLYING THE EMPLOYEE RETIREMENT INCOME SECURITY ACT	12
THE WRIT SHOULD BE GRANTED SO THAT THIS COURT CAN EMBRACE OR REJECT THE STANDARD OF REVIEW ADOPTED BY ELEVEN CIRCUIT COURTS OF APPEALS BUT SHUNNED BY THE FOURTH CIRCUIT IN THIS CASE	14
CONCLUSION	18

TABLE OF AUTHORITIES

CASES CITED	Page
Aitken v. I.P. & G.C.U.-Employer Retirement Fund, 604 F.2d 1261 (9th Cir. 1979)	15
Bayles v. Central States, Southeast and Southwest Areas Pension Fund, 602 F.2d 97 (5th Cir. 1979)	15
Bowen v. United States Postal Service, 459 U.S. 212 (1983)	10
Bruch v. Firestone Tire & Rubber Co., 828 F.2d 134 (3d Cir. 1987)	16
Carbon Fuel Co. v. Mine Workers, 444 U.S. 212 (1979)	10, 11
Carter v. Central States, Southeast and Southwest Areas Pension Fund, 656 F.2d 575 (10th Cir. 1981)	15
Central States, Southeast and Southwest Areas Pension Fund v. Central Transp. Inc., 472 U.S. 559 (1985)	12
Central States, Southeast and Southwest Areas Pension Fund v. Central Transp. Inc., 698 F.2d 802 (6th Cir. 1983), *rev'd on other grounds*, 472 U.S. 559 (1985)	15
Cummings by Techmeir v. Briggs & Stratton Retirement Plan, 606 F. Supp. 659 (W.D. Wisc. 1985), *rev'd*, 797 F.2d 383 (7th Cir.), *cert. denied*, 107 S.Ct. 648 (1986)	17
Deak v. Masters, Mates, & Pilots Pension Plan, 821 F.2d 572 (11th Cir. 1987), *cert. denied*, —— U.S. ——, 56 U.S.L.W. 3360 (Jan. 11, 1988)	15
District 2, UMWA v. Helen Mining Co., 762 F.2d 1155 (3d Cir.), *cert. denied*, 474 U.S. 1006 (1985)	16
District 29, United Mine Workers v. Royal Coal, 768 F.2d 588 (4th Cir. 1985)	5
Gaines v. Amalgamated Ins. Fund, 753 F.2d 288 (3d Cir. 1985)	15
H.K. Porter Co., Inc. v. NLRB, 397 U.S. 99 (1970)	11

TABLE OF AUTHORITIES—Continued

Page

Miles v. New York State Teamsters Conf., 698 F.2d 593 (2d Cir.), *cert. denied*, 464 U.S. 829 (1983) 15
Nichols v. Board of Trustees of the Asbestos Workers Local 124 Pension Plan, —— F.2d ——, 1987 WL 21264 (D.C. Cir. Sept. 24, 1987) 15
NLRB v. Amax Coal Co., 453 U.S. 322 (1981) 14
NLRB v. American National Ins. Co., 343 U.S. 395 (1952) 11
NLRB v. Insurance Agents, 361 U.S. 477 (1960) 11
Palino v. Casey, 664 F.2d 854 (1st Cir. 1981) 15
Short v. Central States, Southeast and Southwest Areas, Pension Fund, 729 F.2d 567 (8th Cir. 1984) 15
Teamsters v. Oliver, 358 U.S. 283 (1959) 11
United Mine Workers Health and Retirement Funds v. Robinson, 455 U.S. 562 (1982) ..... *passim*
Van Boxel v. Journal Company Employees' Pension Trust, —— F.2d ——, 1987 WL 26050 (7th Cir. Dec. 26, 1987) 15, 16
Varhola v. Doe, 820 F.2d 809 (6th Cir. 1987) 16
Wardle v. Central States, Southeast and Southwest Areas Pension Fund, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981) 15
Whip v. Seafarers Vacation Plan, 832 F.2d 853 (4th Cir. 1987) 15

UNITED STATES CODE CITED

Title 29, Section 186(c) 11
Title 29, Section 1102 12
Title 29, Section 1103(a) 12
Title 29, Section 1103(c)(1) 12
Title 29, Section 1104(a)(1) 12
Title 29, Section 1104(a)(1)(D) 12

TABLE OF AUTHORITIES—Continued

ACTS OF CONGRESS CITED Page

Employee Retirement Income Security Act of 1974, Sections 1001-1461 8

Section 402 12
Section 403 12
Section 404(a)(1) 12
Seciton 404(a)(1)(D) 12

Section 302(c) of the Labor Management Relations (Taft-Hartley) Act of 1947, 29 U.S.C. Section 186(c) 11

OTHER AUTHORITIES CITED

13 *Williston on Contracts*, Section 1548 (3d ed. 1970) 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-1185

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA,
AND HERSCHEL HENSON,
Respondents.

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA;
LOCAL UNION 5821;
LOCAL UNION 6046, UNITED MINE WORKERS OF AMERICA;
GARLAND WALKUP, RETIREE;
MADELINE R. THOMAS, WIDOW;
JOSEPH M. HANSHEW, DISABLED RETIREE;
JOHN DOE; MARY DOE,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF BITUMINOUS COAL OPERATORS' ASSOCIATION, INC. AS AMICUS CURIAE IN SUPPORT OF THE UNITED MINE WORKERS OF AMERICA 1974 BENEFIT PLAN AND TRUST'S PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

The Petitioner and *Amicus Curiae*, the Bituminous Coal Operators' Association, Inc. ("BCOA"), urge this Court to grant the Petition for a Writ of Certiorari. The United States Court of Appeals for the Fourth Circuit has ordered a collectively bargained employee health benefits plan to provide benefits to a large group of individuals who were specifically excluded from coverage under the Plan's negotiated eligibility rules. The decision of the Fourth Circuit in this case threatens the future financial stability of the Petitioner Plan. Further, by conflicting with the explicit language of the Plan, the decision establishes a dangerous and unwarranted precedent for judicial intrusion into the substantive terms of collective bargaining agreements and the administration of trust affairs by plan trustees. By venturing into these matters, the Fourth Circuit's opinion will have a destabilizing influence on collective bargaining within the coal industry, and on the prudent and orderly administration of pension and benefit plans generally.

If the Fourth Circuit's opinion in this case remains unreviewed, any dissatisfied party to a future collective bargaining agreement will be encouraged to file a federal court action in an effort to convince a district judge that it is unreasonable to enforce selected bargained-for provisions. *Amicus Curiae* respectfully submits that this result is not consonant with the prior opinions of this Court and would significantly undermine basic tenets of federal labor policy.

INTERESTS OF AMICUS CURIAE

BCOA is the multiemployer bargaining association representing numerous large and small coal companies in collective bargaining with the United Mine Workers of America ("UMWA"). BCOA negotiates the National Bituminous Coal Wage Agreement ("NBCWA"), the industry-wide contract governing terms and conditions of employment in the bituminous coal industry, and along

with the UMWA, is a settlor of the Petitioner United Mine Workers of America 1974 Benefit Plan and Trust ("1974 Benefit Plan"). Because of its role in the negotiation of national bargaining agreements, both past and present, BCOA is in a position to provide the Court with a more complete understanding of the history of bargaining between labor and management in the coal industry and of the destabilizing effect the Fourth Circuit's decision has had, and will continue to have, on the achievement of labor peace through the negotiation and compromise of the competing interests of the parties.

As this brief goes to print, the parties are in the final stages of ratification for a successor agreement to the 1984 NBCWA. This contract will include amendments to the collectively bargained 1974 Benefit Plan, including some additional funding for retiree benefits for the term of the 1988 agreement. In the past, BCOA member companies have been secure in the knowledge that they could rely on the collectively bargained language of the contract and the plan to define the coverage of the 1974 Benefit Plan and hence as the measure of the financial commitment required of them over the contract's term.

As explained *infra*, however, in the wake of the Fourth Circuit's decision below, the collectively bargained terms of such an agreement are no longer guaranteed the protection this Court has always afforded the hard-fought compromises embodied in labor agreements. These terms, instead, may be rewritten by a district judge to conform to his or her own conception of fairness without reference to the unambiguous language of the contract. Under such a rule of law, contract negotiations become exercises in futility and long-term financial planning becomes difficult or impossible.

For these reasons, BCOA submits that its participation in this proceeding would be beneficial to the Court and is essential to its members. BCOA has received the written consent of the parties to the proceeding below to file

this Brief as *Amicus Curiae* (Copies on file with the Clerk of this Court.).

BACKGROUND

The contractual language at issue in this case has been the center of protracted and intense bargaining between BCOA and the UMWA since 1978. During the 1978 negotiating sessions, BCOA sought the total elimination of the 1974 Benefit Plan, a multiemployer welfare benefit plan created by the 1974 NBCWA. The employers sought to shift financial responsibility for the health benefits provided by that Plan to the individual coal operators. The UMWA, conversely, sought to continue the jointly-funded arrangement then in effect and to secure a funding guarantee from all BCOA-member companies. After an 111-day strike, the parties arrived at a compromise eligibility formula that reposed primary responsibility for health benefits with the individual companies, but continued the 1974 Benefit Plan for the limited purpose of providing benefits only for individuals whose former employers were, in the language of the agreement, "no longer in business."[1]

Because the 1974 Wage Agreement failed to define the term "no longer in business," the Trustees, of necessity, adopted an administrative interpretation of this eligibility threshold. This working definition proved unsatisfactory, so during negotiations for the 1981 NBCWA, the BCOA agreed with the UMWA upon contractual language expressly defining the "no longer in business" term

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[1] The intended role of the 1974 Benefit Plan is truly limited. The single employer plans currently provide benefits to approximately 31,400 retirees. By contrast, the 1974 Benefit Plan serves just over 2,100 legitimate beneficiaries (plus dependents) under its collectively-bargained language. An additional 670 individuals (24 percent of the Plan's beneficiary population) are covered as a result of court injunctions related to this dispute. BCOA projects that unless the Fourth Circuit's decision is overturned, the Plan could soon be required to add at least 1,200 additional unintended beneficiaries to its rolls.

and its relation to the limited role the 1974 Benefit Plan was intended to serve. Specifically, the parties provided that a company was "no longer in business" only if it (1) had ceased receiving income from the production or sale of coal, (2) had ceased employing persons covered by the NBCWA *and* (3) was financially unable, either by itself or through its "successors . . . assigns . . . or [any] related division, subsidiary or parent corporation" to pay the benefits in question, whether the successor or parent was covered by the agreement or not. Appendix to Petition for Writ of Certiorari at p. 74a (hereafter cited as App. at ——). Following the adoption of this language, and throughout the term of the 1981 NBCWA, the Trustees of the Plan consistently enforced the contract's express terms, denying benefits to all workers whose former employer did not meet each element of the contractual definition of "no longer in business."

The UMWA subsequently became dissatisfied with the consequences of the bargain it had made in 1981. Accordingly, in 1984, the UMWA proposed new contract language which would have altered the definition of "no longer in business" to provide for Plan eligibility whenever the subject company (or its successor or parent) was *either* unable *or* had no legal obligation to pay for the benefits. App. at 98a-102a. The UMWA pressed hard for this proposal, insisting on its inclusion in the 1984 NBCWA, until the last bargaining session. It then reluctantly abandoned the proposal, and the 1984 NBCWA retained the narrow eligibility provisions noted above.

Following the 1984 negotiations, the UMWA became even more dissatisfied with the contract it had negotiated with the BCOA. In particular, the decision of the Fourth Circuit in *District 29, United Mine Workers v. Royal Coal*, 768 F.2d 588 (4th Cir. 1985) ("*Royal Coal*"), App. at 42a, caused the union to redouble its efforts to get out from under its bargained-for agreement. In that case, the Court determined that the obligations of the in-

dividual coal companies to fund the disputed health benefits under their individual plans terminated with the expiration of the collective bargaining agreement they had executed.

After *Royal Coal*, the UMWA found itself with limiting contractual language it had been unable to change at the bargaining table and a further limiting Fourth Circuit decision making the individual employer's legal obligation to pay benefits coextensive with the life of its collective bargaining agreement. Having boxed itself in, the UMWA felt compelled to ask a federal judge to change outright the 1984 contract and impose on the 1974 Benefit Plan an obligation it had not assumed.

This is precisely what the Fourth Circuit has done. By agreeing with the UMWA and holding the Plan liable for benefits in situations beyond the contemplation of the contracting parties and in derogation of the express language of the agreement itself, the Court has disrupted a collectively bargained benefit program, and granted to the UMWA contract language it had been unable to win at the bargaining table.

SUMMARY OF ARGUMENT

By invalidating the negotiated health benefit eligibility requirements of the 1974 Benefit Plan, contained in two successive collective bargaining agreements between BCOA and the UMWA, the Fourth Circuit has directly overturned a bargain struck by the parties—a bargain that was lawful, tailored to the needs of the UMWA and the employers, and mindful of the needs of the intended beneficiaries. The 1974 Benefit Plan is a pre-funded plan and, as such, has not received a single employer contribution since the expiration of the 1978 NBCWA. In the absence of additional funding, it is projected that the Plan would soon exhaust its remaining assets, leaving without benefits both those intended for coverage and

those for whom eligibility has been manufactured by the Fourth Circuit.[2]

Moreover, in excising the bargained-for language limiting plan liability, and thus simply ignoring this Court's opinion in *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982), the Fourth Circuit has established a destabilizing precedent, authorizing district judges to police for fairness the hard-fought compromises resulting from bargaining between management and labor. Such a result cannot be justified in the face of this Court's continuing and oft-expressed commitment to the protection of the results of collective bargaining.

In addition, the Court of Appeals' decision was predicated wholly on the panel's interpretation of language outside of the Plan document. This language, lifted from the 1984 NBCWA, is part of a general description of the combined benefits offered under four different multiemployer plans and a prototype single employer health benefits plan that each coal operator was obligated to adopt. The Fourth Circuit read this language as an undertaking to provide certain benefits for life. Even assuming, however, that employers such as Royal Coal obligated themselves to provide their employees with lifetime benefits (an assumption *Amicus Curiae* vigorously disputes), there is no indication in the contract that the obligation was to be funded through

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[2] As noted *supra* at p. 3, the contract currently being negotiated will include additional funding for the 1974 Benefit Plan to insure its liquidity through the term of this agreement. This, however, will require BCOA member companies to divert some of their limited resources to pay benefits beyond the contemplation of the bargaining parties. Moreover, unless the Fourth Circuit's mandate is reversed, the parties may have to revisit this issue in future bargaining if the negotiated contribution levels prove insufficient to fund the benefits of those retirees added to the Plan's rolls by that Court. The problems engendered by the Fourth Circuit's opinion will thus recur, regardless of how they are addressed in the current agreement.

the 1974 Benefit Plan unless all of the specific eligibility requirements of that Plan were met.

The Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 ("ERISA"), requires that every employee benefit plan be established in writing, as a separate legal entity, and that it be administered by its fiduciaries in accordance with the written terms of that plan. As the Fourth Circuit admitted, the 1974 Benefit Plan Trustees did exactly this. Relying on general and ambiguous language in the contract, however, the Court of Appeals reached out to the 1974 Benefit Plan and determined that its assets could be used to pay for alleged promises made by other entities to individuals who were never intended to benefit from that Plan. In so doing, the court has required the Plan fiduciaries—who have followed the unambiguous terms of a lawful plan in limiting payments to intended beneficiaries—to jeopardize the security of those intended beneficiaries by paying benefits in a manner expressly prohibited by the governing documents. In the absence of wrongdoing, either by the 1974 Benefit Plan or its Trustees, federal policy cannot permit this result.

Finally, even assuming, *arguendo*, that *Robinson* does not control this case, and that some level of judicial review of the operation of collectively bargained eligibility provisions is appropriate, the Fourth Circuit's willingness to give *de novo* review to the eligibility decision made by the Trustees represents a total, and unexplained, departure from prior Fourth Circuit case law and from the unanimous view of the other Circuit Courts of Appeals. Without citation or exposition, the Fourth Circuit abandoned the "arbitrary and capricious" standard of review embraced in every other Circuit and, until now in the Fourth Circuit as well, and embarked on its own review of the language of the Plan, as well as extrinsic evidence, in adopting its own "reading of the terms of the agreements . . . ." App. at 3a. Accordingly, this Court should grant the requested Writ to answer the

question expressly left open in *Robinson*, *i.e.*, whether a federal court is authorized to review the eligibility interpretations of plan trustees, and if so, to determine the appropriate standard under which their actions should be reviewed. *Robinson*, 455 U.S. at 573, n. 12.

ARGUMENT

THE WRIT SHOULD BE GRANTED AND THE FOURTH CIRCUIT'S DECISION REVERSED TO PREVENT OTHER COURTS FROM RELYING THEREON IN MEASURING COLLECTIVELY BARGAINED COMPROMISES BY JUDICIALLY IMPOSED STANDARDS OF REASONABLENESS.

Through long and intensive bargaining in 1978 and 1981, BCOA and the UMWA arrived at eligibility language for the 1974 Benefit Plan which was acceptable to both parties but not entirely pleasing to either. The Fourth Circuit acknowledged that the resulting bargained-for language created "patent limitation[s]" on the liability of Petitioner to provide health benefits to retired miners. App. at 5a. Further, the Fourth Circuit acknowledged that the companies involved in this suit did not satisfy the contract's "no longer in business" eligibility threshold, *i.e.*, they did not meet "the literal provisions triggering the liability of the [Petitioner]." App. at 5a-6a. Accordingly, the Court of Appeals admitted that, in denying benefits to former employees of these companies, the Trustees did nothing more than "adhere[] to the literal terms of the agreement." *Id.*

The Fourth Circuit, however, was unwilling to "permit the [Petitioner] to escape liability by its strict adherence to the literal terms in the agreement." *Id.* The Court thought it was necessary to rewrite the contract to provide for an eventuality the parties "simply did not consider," specifically, the legal ramifications of *Royal Coal*. App. at 7a. Had the parties anticipated this "unforeseen" decision, the Court concluded, they would have agreed to a different eligibility standard, one resulting

in liability for Petitioner. *Id.*[3] Accordingly, it rewrote the "literal terms in the agreement," terms resulting from informed and intensive bargaining, and substituted a different eligibility requirement, one these companies *could* meet. *Id.* Such a reformation, the Court held, was consonant with what it found to be the parties' more generalized intention to create a seamless "safety net" for "orphaned" retirees. *Id.*

The Fourth Circuit's reformation of the parties' agreement is insupportable both factually and legally. The parties could not have been clearer when the eligibility standards were negotiated. The definition of "no longer in business" was necessarily strict and limited. The Plan was never intended or designed as an all-encompassing safety net and both the clear language of the documents and the UMWA's subsequent efforts in negotiations to broaden the eligibility standards are telling proof of the parties' original intent. The Court simply ignored this negotiating history while writing from the heart, not the contract.

The Fourth Circuit's disregard of the parties' bargain is inimical to the most basic precepts of our national labor policy, as repeatedly expressed by this Court. A federal court is not authorized to substitute its judgment for that embodied in the collectively bargained agreement of the parties. *See, e.g., Bowen v. United States Postal Service*, 459 U.S. 212, 241 (1983); *United Mine Workers Health & Retirement Funds v. Robinson*, 455 U.S. 562, 576 (1982); *Carbon Fuel Co. v. Mine Workers*,

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[3] The Court's speculation about what the bargaining parties might have negotiated under different circumstances cannot, under traditional notions of contract law, be used to justify the result reached below. It is well settled that "[i]t is not enough to justify reformation that the court is satisfied that the parties would have come to a certain agreement had they been aware of the actual facts." 13 *Williston on Contracts* § 1548 (3d ed. 1970). Thus, the Fourth Circuit's reformation cannot be supported by the panel's belief that different eligibility language would have been agreed to had the parties anticipated *Royal Coal*.

444 U.S. 212, 218-19 (1979); *H.K. Porter Co., Inc. v. NLRB*, 397 U.S. 99, 108 (1970).

This, in fact, is the central teaching of *Robinson*. There, the Circuit Court had determined that the bargained-for eligibility language in an ERISA-qualified plan resulted in "unreasonable" distinctions and "arbitrarily" denied benefits to certain individuals, in violation of Section 302(c) of the Labor Management Relations (Taft-Hartley) Act of 1947, 29 U.S.C. § 186(c). In reversing the Court of Appeals, this Court, in language of unmistakable clarity, unanimously held that "when neither the collective bargaining process nor its end product violates any command of Congress, a federal court has no authority to modify the substantive terms of a collective-bargaining contract." *Robinson*, 455 U.S. at 576.

Because *Robinson* directly controls this case, it is not surprising that it was extensively briefed and argued before the Fourth Circuit. That Court, however, failed to distinguish, or even mention, either *Robinson*, its ancestors,[4] or its progeny in resolving "not [to] permit" the implementation of the plain language of the agreement. *Amicus Curiae* respectfully submits that the Fourth Circuit's failure even to acknowledge the existence of *Robinson* and the Court's willingness to substitute its judgment for the language of the bargaining parties as to the appropriate preconditions for benefit eligibility make this case worthy of consideration on Certiorari. This Court should take this opportunity to strongly reaffirm the principles articulated in *H.K. Porter* and *Robinson* and to police the implementation of its mandates by the lower federal courts.

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[4] *See, e.g., Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212 (1979); *H.K. Porter Co., Inc. v. NLRB*, 397 U.S. 99 (1970); *NLRB v. Insurance Agents*, 361 U.S. 477 (1960); *Teamsters v. Oliver*, 358 U.S. 283 (1959); *NLRB v. American National Ins. Co.*, 343 U.S. 395 (1952).

THE WRIT SHOULD BE GRANTED BECAUSE THE FOURTH CIRCUIT'S OPINION DOES VIOLENCE TO BOTH THE PLAIN LANGUAGE AND THE CONGRESSIONAL INTENT UNDERLYING THE EMPLOYEE RETIREMENT INCOME SECURITY ACT.

As this Court has recognized, the duty of a trustee of an ERISA-qualified plan "is to provide specific benefits to those who are entitled to them in accordance with the terms of a plan." *Central States, Southeast and Southwest Areas Pension Fund v. Central Transp. Inc.*, 472 U.S. 559, 577 (1985). As noted *supra*, under the language of the 1974 Benefit Plan document, the individual Respondents in this case are not entitled to benefits because, as the Fourth Circuit explained, "the literal provisions triggering the liability of the [Petitioner] . . . are not satisfied." App. at 5a. Thus, in denying eligibility to the individual respondents, the Trustees did no more than implement the language of their Plan.

This, in fact, is what ERISA demands. Section 402 of ERISA provides that "[e]very employee benefit plan shall be established and maintained pursuant to a written instrument." 29 U.S.C. § 1102. Section 403 requires that all plan assets be held in trust, and shall be held for the exclusive purposes of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses. 29 U.S.C. § 1103(a), (c)(1). Section 404(a)(1) requires the trustees, as fiduciaries, to discharge their duties "solely in the interest of participants and beneficiaries." 29 U.S.C. § 1104(a)(1). Section 404(a)(1)(D) further mandates that the trustees act "in accordance with the documents and instruments governing the plan . . . ." 29 U.S.C. § 1104(a)(1)(D). Indeed, the whole of ERISA's statutory scheme is infused with the basic proposition that a plan trustee's every action must be guided solely by the language of lawful plan documents and must be for the benefit of stated participants and beneficiaries.

In this case, the Fourth Circuit has mandated that the Trustees eschew the "patent limitations" of the plan document and embrace instead more general and ambiguous "expressions of intent" found outside that document in the collective bargaining agreement, expressions relating to parties other than the intended beneficiaries of the Plan.[5] Such a command cannot be reconciled with the plain language of ERISA, and there is no rational policy justification for permitting such interference with a lawfully maintained employee benefit plan. Indeed, it must be emphasized that the 1974 Benefit Plan itself is not a party to the collective bargaining agreement, and is simply one of many employee benefit plans referred to in that document. The 1974 Benefit Plan contains no unkept promises to beneficiaries—indeed, the Petitioner has continued, without interruption, to provide benefits to all individuals who have met its negotiated eligibility criteria. The Plan has not terminated the entitlement to benefits of any of its beneficiaries, but instead has continued (during its negotiated existence) to provide benefits for the lifetimes of qualified individuals.

Through the 1974 Benefit Plan, the individual coal operators signatory to the NBCWA agreed to fund collectively the benefit obligations of other coal operators in certain very clearly defined and narrowly drawn circum-

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[5] It must be noted that even the language of the "general description" of the collective bargaining agreement, which was relied upon by the Court of Appeals, cannot justify the imposition of liability on the 1974 Benefit Plan. First, the language appears by its terms only to summarize generally the benefits that were agreed to by the parties signatory to the contract, but does not anywhere state that the 1974 Benefit Plan will be the guarantor of those benefits. Second, the general description itself states that it "is intended merely to highlight certain information . . . and is qualified in its entirety by, and subject to the more detailed information contained in the Plans and Trusts . . . . *The specific provisions of the Plans will govern in the event of any inconsistencies between the general description and the Plans.*" App. at 93a (Emphasis added). The Fourth Circuit dealt with this language in the same way it dealt with *Robinson*—by simply ignoring it.

stances. Those circumstances define the contours of the 1974 Benefit Plan's eligibility requirements. Whatever the merits of the Fourth Circuit's conclusion with respect to the liability of employers that have left the coal business, it is patently clear that the remaining coal operators never agreed, and hence the 1974 Benefit Plan is not liable, to fund the supposedly continuing obligation of companies such as Royal Coal to pay health benefits to retired miners.

By imposing that obligation on the 1974 Benefit Plan, the Fourth Circuit has rested on the Plan the remedial burden of an undertaking presumably made by certain parties to the collective bargaining agreement—*i.e.*, Royal Coal Co. (and other similarly situated companies) and the UMWA. If the 1974 Benefit Plan is not relieved of this burden, the cost will, in reality, be borne by the true beneficiaries of the Plan, for whom only a limited amount of benefit dollars is available. This result will undermine all of the protections these beneficiaries previously enjoyed under ERISA. Eligibility rules that were carefully crafted to protect those truly intended to be beneficiaries will now be discarded, and money that was previously held in trust for these beneficiaries will now be used to provide for others. This Court should grant the requested Writ to establish a federal policy preserving the sanctity of lawfully established, ERISA-covered employee benefit plans, and protecting them from the imposition of liabilities for asserted promises made by other parties.

THE WRIT SHOULD BE GRANTED SO THAT THIS COURT CAN EMBRACE OR REJECT THE STANDARD OF REVIEW ADOPTED BY ELEVEN CIRCUIT COURTS OF APPEALS BUT SHUNNED BY THE FOURTH CIRCUIT IN THIS CASE.

In *NLRB v. Amax Coal Co.*, 453 U.S. 322, 330 (1981), and again in *Robinson*, 455 U.S. at 562 n.12, this Court declined to determine "whether federal courts sitting as courts of equity are authorized to enforce" the tradi-

tional fiduciary duties incumbent on trustees of Taft-Hartley plans such as Petitioner. In the absence of guidance from this Court, the Circuit Courts of Appeals have determined that review is authorized, but that the trustees' interpretations of trust language must be upheld unless they are "arbitrary and capricious." Until the Fourth Circuit's decision below, the Circuits had unanimously adopted this view.[6] Indeed, in a subsequent opinion, the Seventh Circuit has suggested, in *dictum*, that it might be appropriate to accord Taft-Hartley trustees even greater deference, overturning their decisions only when it can be said with certainty that they failed utterly to interpret the agreement they were appointed to interpret. *Van Boxel v. Journal Company Employees' Pension Trust*, —— F.2d ——, 1987 WL 26050 at p. 4 (7th Cir. Dec. 26, 1987).

As evidenced by its opinion in this case, however, the Fourth Circuit has now apparently abandoned the deference embodied in the arbitrary and capricious standard in favor of *de novo* review. Although the applica-

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[6] *See, e.g., First: Palino v. Casey*, 664 F.2d 854 (1st Cir. 1981); *Second: Miles v. New York State Teamsters Conf.*, 698 F.2d 593 (2d Cir.), *cert. denied*, 464 U.S. 829 (1983); *Third: Gaines v. Amalgamated Ins. Fund*, 753 F.2d 288 (3d Cir. 1985); *Fourth: Whip v. Seafarers Vacation Plan*, 832 F.2d 853 (4th Cir. 1987); *Fifth: Bayles v. Central States, Southeast and Southwest Areas Pension Fund*, 602 F.2d 97 (5th Cir. 1979); *Sixth: Central States, Southeast and Southwest Areas Pension Fund v. Central Transp. Inc.*, 698 F.2d 802 (6th Cir. 1983), *rev'd on other grounds*, 472 U.S. 559 (1985); *Seventh: Wardle v. Central States, Southeast and Southwest Pension Fund*, 627 F.2d 820 (7th Cir. 1980), *cert. denied*, 449 U.S. 1112 (1981); *Eighth: Short v. Central States, Southeast and Southwest Areas Pension Fund*, 729 F.2d 567 (8th Cir. 1984); *Ninth: Aitken v. I.P. & G.C.U.-Employer Retirement Fund*, 604 F.2d 1261 (9th Cir. 1979) (Kennedy, J.); *Tenth: Carter v. Central States, Southeast and Southwest Areas Pension Fund*, 656 F.2d 575 (10th Cir. 1981); *Eleventh: Deak v. Masters, Mates, & Pilots Pension Plan*, 821 F.2d 572 (11th Cir. 1987), *cert. denied*, —— U.S. ——, 56 U.S.L.W. 3360 (Jan. 11, 1988); *D.C.: Nichols v. Board of Trustees of the Asbestos Workers Local 24 Pension Plan*, —— F.2d ——, 1987 WL 21264 (D.C. Cir. Sept. 24, 1987).

bility of the arbitrary and capricious standard to this dispute was extensively briefed and argued below by both parties, the Court of Appeals made no reference to this or any other standard of review in its opinion. Instead, the panel simply determined that by implementing the Plan's "literal" language, the Trustees had somehow misinterpreted the Plan, and the Court then proceeded to substitute its own interpretation.

As noted above, the Fourth Circuit's implied rejection of the arbitrary and capricious standard of review places it in conflict with every one of the remaining Circuit Courts.[7] Even assuming, however, that the Fourth Circuit's opinion can be read as somehow utilizing, if not articulating, the arbitrary and capricious standard, this Court should grant the Writ to resolve a direct conflict between the Fourth Circuit's opinion in this case and the opinions of other Circuit Courts relating to the application of that standard.

In *District 2, UMWA v. Helen Mining Co.*, 762 F.2d 1155 (3d Cir.), *cert. denied*, 474 U.S. 1006 (1985), the Third Circuit held that, as a matter of law, trustees do not act in an arbitrary and capricious manner when they implement the literal eligibility terms of their plan. The court held that "[w]hen the trustees have consistently and literally followed an unambiguous benefit eligibility

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[7] It should be noted that in the context of non-Taft-Hartley plans, several courts have either expressed reservations about, or actually rejected the arbitrary and capricious standard. *See Van Boxel v. Journal Company Employees' Pension Trust*, —— F.2d ——, 1987 WL 26050 (7th Cir. Dec. 26, 1987) (questioning standard when trustees are not neutral or jointly appointed); *Bruch v. Firestone Tire & Rubber Co.*, 828 F.2d 134 (3d Cir. 1987) (non-Taft-Hartley plan; rejecting standard where administrator benefits from denial of eligibility); *Varholz v. Doe*, 820 F.2d 809 (6th Cir. 1987) (expressing skepticism about application of standard to non-Taft-Hartley plans). To the extent these cases may prompt a reevaluation of the arbitrary and capricious standard in the context of jointly-trusteed plans, the instability they engender reinforces the need for this Court to grant review and resolve the brewing conflict.

requirement that was bargained for and that was set forth in an employee benefit plan, that action cannot be called arbitrary and capricious by a court unless enforcement would violate federal law or policy." *Id.* at 1160. Since the Fourth Circuit acknowledged that the "patent" and "literal" terms of the plan were consistently implemented by the trustees and expressly did not find any violation of federal law, its decision cannot be harmonized with that of the Third Circuit in *Helen Mining.*

Similarly, the Seventh Circuit has recognized that fealty to the literal eligibility rules of a plan by its trustees cannot be arbitrary and capricious, even when the results can be characterized as unfair or illogical. In *Cummings by Techmeir v. Briggs & Stratton Retirement Plan,* 797 F.2d 383 (7th Cir.), *cert. denied,* 107 S.Ct. 648 (1986), the plan trustees had denied eligibility to the daughter of a deceased plan participant. Although the participant had, at the time of his divorce, contracted to name his daughter as his beneficiary under the plan, he died without executing the necessary forms entitling the daughter to receive benefits. Acknowledging that the trustees had merely implemented the literal terms of the plan in denying the daughter benefits, the district court imposed a constructive trust in her favor, claming that any other result would be "unconscionable, unjust, or unfair." *See, Cummings by Techmeir,* 606 F. Supp. 659, 664 (W.D. Wisc. 1985).

The Seventh Circuit reversed, holding that the trustees "had clearly complied with both the written terms of the Plan and their fiduciary duties." 797 F.2d at 388. This conclusion, the Court held, "should have ended the mat ter." *Id.* In stark contrast, the Fourth Circuit acknowledged in this case that the Trustees had complied with the terms of their Plan and performed their fiduciary duties. The Court, however, insisted on reviewing the net results of the Trustees' action. Such an inquiry is patently inconsistent with the rule enunciated in *Cummings by Techmeir.*

Accordingly, *Amicus Curiae* urges this Court to grant the Writ to resolve these irreconcilable differences between the Fourth Circuit's treatment of this case below and the contrary view expressed by other Circuits addressing substantially identical questions.

CONCLUSION

Even if action by this Court were not necessary to resolve a conflict between the Fourth Circuit's decision and the decisions of other Circuit Courts of Appeals, the confusion that will be generated by the Fourth Circuit's action in this case demonstrates why this important area of federal law should be settled by this Court. As noted herein, the Fourth Circuit has rejected the interpretation of a Board of Trustees of a Taft-Hartley-qualified trust relating to collectively bargained benefit eligibility rules, without ever addressing either this Court's analysis in *Robinson* or the arbitrary and capricious standard of review adopted by every other Circuit Court of Appeals to address trustee actions. By refusing to follow, or even acknowledge, two established lines of precedent applicable to cases of this type, the Fourth Circuit has created new uncertainty as to the enforceability of negotiated eligibility rules for Taft-Hartley plans, and as to the standard by which trustee interpretations and implementation of those rules will be judged. This Court should grant the Writ to remove that uncertainty.

For the foregoing reasons, *Amicus Curiae*, Bituminous Coal Operators Association, urges that the petition of the 1974 Benefit Plan be granted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA;
HERSCHEL HENSON,
Respondents.

UNITED MINE WORKERS OF AMERICA
1974 BENEFIT PLAN AND TRUST,
Petitioner,

v.

DISTRICT 29, UNITED MINE WORKERS OF AMERICA,
LOCAL UNION 5821, LOCAL UNION 6046,
GARLAND WALKUP, MADELINE R. THOMAS,
JOSEPH M. HANSHEW, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	2
SUMMARY OF ARGUMENT	8
ARGUMENT	9
I. Petitioner Presents No Important Statutory Question; This Case Involves No More Than An Interpretation Of A Collective Bargaining Agreement With Which Petitioner Disagrees	9
II. The Decision Of The Court Of Appeals Does Not Violate Section 402 Or 404(a)(1)(D) Of ERISA	17
CONCLUSION	19

TABLE OF AUTHORITIES

CASES Page

Allied Chemical and Alkali Workers of America v. Pittsburgh Plate Glass Co., 404 U.S. 157 (1971).. 9
Bower v. The Bunker Hill Co., 725 F.2d 1221 (9th Cir. 1984) 11
Crockett v. Vecellio and Grogan, et al., No. 1:85-1448 (S.D.W.Va., 2/23/87) 8
Cummings v. Briggs and Stratton Retirement Plan, 797 F.2d 383 (7th Cir. 1986) 18
District 17, UMWA v. Allied Corp., 735 F.2d 121 (4th Cir. 1984), on rehearing *en banc*, 765 F.2d 412 (4th Cir.), *cert. denied*, 473 U.S. 905 (1985).. 5, 6, 7
District 29, UMWA v. Royal Coal Company, 768 F.2d 588 (4th Cir. 1985) 7
Donovan v. Carlough, 576 F. Supp. 245, supplemented at 581 F. Supp. 271 (D.C. D.C. 1984), *aff'd*, 753 F.2d 166 (D.C. Cir. 1985) 18
Hansen v. White Motor Corp., 788 F.2d 1186 (6th Cir. 1986) 11
Howard Johnson Co. v. Detroit Local Joint Executive Board, 417 U.S. 249 (1974) 4
International Union, United Auto Workers v. Yard-Man, Inc., 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984) 9, 10, 11
John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964) 4
Local 150-A, UFCW v. Dubuque Packing Co., 756 F.2d 66 (8th Cir. 1985) 11
Nachwalter v. Christie, 305 F.2d 956 (11th Cir. 1986) 18
NLRB v. Burns, 406 U.S. 272 (1972) 4
Northwest Administrators, Inc. v. B.V. & B.R., Inc., 813 F.2d 223 (9th Cir. 1987) 18
Policy v. Powell Pressed Steel, 770 F.2d 669 (6th Cir. 1985) 10, 11
Schifano, et al. v. UMWA 1974 Benefit Plan and Trust, No. 83-0264-C(K) (N.D.W.Va., 2/23/87).. 8
United Mine Workers Health and Retirement Funds v. Robinson, 455 U.S. 562 (1982) 3, 9

TABLE OF AUTHORITIES—Continued

Page

Upholsterer's International Union v. American Pad & Textile Company, 372 F.2d 427 (6th Cir. 1967) 11

Weimer v. Kurz-Kasch, Inc., 773 F.2d 669 (6th Cir. 1985) 11

STATUTES

Employment Retirement Income Security Act of 1974 ..... 8, 17, 18

29 U.S.C. § 1102 17

29 U.S.C. § 1104(a)(1)(D) 17

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On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

The petitioner seeks a writ of certiorari to the United States Court of Appeals for the Fourth Circuit, to review an adverse decision by that court, interpreting the terms of a collective bargaining agreement and an employee welfare benefit plan created and maintained pursuant to that agreement, in a manner with which the petitioner does not agree.

STATEMENT OF THE CASE

This case involves the interpretation of provisions of the National Bituminous Coal Wage Agreement, a national collective bargaining agreement periodically negotiated between the United Mine Workers of America and the Bituminous Coal Operators Association for more than 40 years, and the benefit plans established by those agreements for the purpose of providing health care benefits to retired and disabled coal miners, and their dependents.

The National Bituminous Coal Wage Agreement of 1946 created a welfare and retirement fund and a medical and hospital fund for coal miners. Those funds, through several collective bargaining agreements, eventually became the "United Mine Workers Welfare and Retirement Fund of 1950". From 1946 to 1974, the trustees of the fund, by resolution, established various medical and retirement benefits for UMWA miners, including, in 1948, a monthly pension of $100 for retired miners, payable "during the lifetime of the pensioner." Retired miners also received health benefits as long as they received their pensions, i.e., until their deaths. The Fund was supported by tonnage royalties on coal produced by signatory employers, and its beneficiaries received a health card from the Fund. Those benefits were never terminated for any class of eligible pensioners, although benefits were increased and extended to additional classes of beneficiaries over the years.

In 1974, the UMWA and BCOA agreed to continue the 1950 Fund in the form of four separate trusts. Two,

the 1950 Pension and Benefit Trusts, provided pension and welfare benefits, respectively, for present retirees, and the other two, the 1974 Pension Trust and 1974 Benefit Trust, provided similar benefits for those retiring in 1976 and after. The 1974 Benefit Plan and Trust also provided health care benefits to working miners. In the 1974 negotiations, the parties also agreed to extend lifetime health benefits, already provided to retired miners, to widows of retired miners, and to widows of retired or pension-eligible miners who would die in the future. *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982).[1]

The parties further agreed at that time to specify the nature and amount of pension and other benefits in the collective bargaining agreement itself. Each agreement since 1974 has included a "Summary" or "General Description" of plan benefits which states that a pensioner who retired prior to the agreement "will be entitled to retain his Health Services card for life" and that "his widow will retain a Health Services card until her death or remarriage." The phrase is repeated approximately nine time in each agreement, describing benefits for different categories of pensioners.

In late 1977, near the end of the 1974 agreement, as a result of rising health care costs and declining royalties due to wildcat strikes, the 1974 Benefit Plan began requiring beneficiaries to pay copayments and deductibles, and eventually, during the course of the lengthy contract strike, found it necessary to suspend benefits entirely for lack of funds. In negotiations for the 1978 successor agreement, the BCOA proposed that the 1974 Benefit Plan be completely eliminated and replaced by separate plans established by each signatory employer.

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[1] The issue in *Robinson* was the exclusion from that bargain of widows of miners who died while pension-eligible, but who had not retired, prior to the 1974 agreement.

A tentative contract including that provision, and making no provision for "orphaned" pensioners, was overwhelmingly rejected by the union's bargaining council. Union negotiators thereafter insisted on the retention of the 1974 Benefit Plan as a "safety net" for orphaned pensioners who might otherwise lose their benefits. The agreement finally adopted did retain the 1974 Benefit Plan for that purpose, and also included a guarantee of all four benefit plans by the signatory employers. Benefits were restored to previous levels, and beneficiaries were reimbursed for expenses incurred while benefits were suspended due to the insolvency of the Trust.

The 1978 agreement did not define the point at which the responsibility for providing benefits would pass from the employer to the 1974 Benefit Plan, except to provide that the 1974 Benefit Plan would provide benefits where the pensioner's last employer was "no longer in business." The trustees therefore developed their own definition, "Q & A H-16", to determine when that responsibility passed to the 1974 Benefit Plan, and when it remained with the employer or was transferred to a successor. The trustees defined "no longer in business" as, essentially, "no longer in the coal business." As to successors, they adopted a test drawn from decisions of this Court defining the circumstances in which a successor is responsible for the collective bargaining obligations of its predecessor.[2]

During the term of the 1978 agreement, the BCOA became concerned that the definition of "no longer in business" adopted by the trustees was susceptible to abuse by employers seeking to avoid their responsibilities to their pensioners by transferring that liability to the

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[2] *John Wiley & Sons, Inc. v. Livingstone*, 376 U.S. 543 (1964); *NLRB v. Burns*, 406 U.S. 272 (1972); *Howard Johnson Co. v. Detroit Local Joint Executive Board*, 417 U.S. 249 (1974).

1974 Benefit Plan.[3] In 1980, the parties agreed that the 1974 Benefit Plan should also provide benefits to laid off miners who would otherwise lose health care benefits because their employers were no longer in business. The BCOA proposed, and the Union readily accepted, a modification of the "no longer in business" designed to address that problem. Similar language was incorporated into the 1981 wage agreement. The change was completely noncontroversial, evoking not even a murmur of dissent from union negotiators or the union's membership.

During the term of the 1981 agreement, the trustees attempted to develop a formal interpretation of the new language. Although that effort was ultimately abandoned, they apparently did, over the dissent of the Chairman, Harrison Combs, adopt an approach by which the 1974 Benefit Trust refused to provide benefits to pensioners if their last employer had any assets, or had a solvent parent corporation or subsidiary, regardless of whether or not the employer or the related entity had any legal obligation to provide those benefits. They simply assumed that the question of liability was not relevant to the inquiry, despite the fact that for many pensioners, such an assumption rendered illusory the promise of health benefits "for life" repeated in four collective bargaining agreements since 1974, a promise that had been kept for more than thirty years.

The interpretation adopted by the trustees has led to a series of litigation culminating in the present case. The problem first became apparent in *District 17, United Mine Workers, et al. v. Allied Corporation*, 735 F.2d 121

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[3] By ceasing operations in the coal business, a solvent signatory employer could succeed in transferring its liability for pensioner health benefits to the 1974 Benefit Plan, although still signatory to an unexpired collective bargaining agreement, and thus both liable and able to pay those benefits.

(4th Cir. 1984), on rehearing *en banc*, 765 F.2d 412 (4th Cir.), *cert. denied*, 473 U.S. 905 (1985).

In *Allied*, the employer transferred its coal mining divisions to other corporations during the term of the 1978 agreement, completely ceased operations in the coal industry, and did not become signatory to the 1981 agreement. It continued to provide benefits to pensioners who retired from its coal mining operations for a period of time after the expiration of the 1978 agreement, and then terminated those benefits. The 1974 Benefit Plan declined to assume responsibility for the pensioners because the purchasers were Allied's successors. The union and the pensioners sued both Allied and the 1974 Benefit Plan, asserting that one or the other was obligated to provide benefits. The District Court held that Allied continued to bear responsibility for those benefits, because it breached a contractual obligation during the term of the 1978 agreement when it sold its coal divisions without requiring the purchasers to assume its obligations to the pensioners.

A panel of the Fourth Circuit ruled that Allied's obligation to provide benefits to its pensioners did not survive the expiration of the 1978 agreement, but that the 1974 Benefit Plan was obligated to provide those benefits once the employer was no longer obligated to do so. On rehearing, the Court of Appeals, sitting *en banc*, affirmed the judgment and reasoning of the District Court, holding that although Allied's contractual obligation to provide benefits terminated with the expiration of the 1978 agreement, Allied continued to be responsible for the benefits of its pensioners as a foreseeable consequence of its breach of that agreement during its term. The court thus did not reach the issue of the responsibility of the 1974 Benefit Plan, although indicating in a footnote that "it seems clear" that it would be responsible if none of the other parties were.

Negotiations for the 1984 agreement took place pending rehearing of *Allied* by the Fourth Circuit.[4] The union was concerned about the potential gap in coverage which might develop, in view of the position taken by the 1974 Benefit Trust that it was not responsible for the Allied pensioners even if Allied and its successors were determined to have no obligation to them. The union therefore sought to correct the erroneous approach of the trustees and to restore the 1974 Benefit Plan to its intended function as a "safety net" for orphaned pensioners who would otherwise lose their benefits. The BCOA declined to clarify the situation, and the issue was left for resolution in *Allied.* However, when the court decided *Allied* on the breach of contract issue, the issue of the 1974 Benefit Plan's obligation where there is no other responsible party remained unresolved.

The issue reappeared following the expiration of the 1981 agreement, when Royal Coal Company ceased operations in the coal industry, did not become signatory to the 1984 agreement, and terminated benefits to its pensioners. This litigation followed.

The District Court initially enjoined Royal from failing to provide benefits to its pensioners. On Royal's appeal, the Fourth Circuit vacated the preliminary injunction, holding that Royal's obligation did not survive the expiration of the 1981 agreement. *District 29, United Mine Workers v. Royal Coal Co.*, 768 F.2d 588 (4th Cir. 1985). As it had in *Allied*, the 1974 Benefit Plan took the position that although Royal was no longer obligated to provide benefits to its pensioners, and was itself financially unable to provide them even if obligated to do so, the Plan had no responsibility to those pensioners because Royal was a subsidiary of another corporation which was financially able, although also not obligated, to provide them.

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[4] The 1984 agreement was signed two days before oral argument in the Fourth Circuit's *en banc* rehearing.

On remand, the District Court reviewed the entire history of collective bargaining between the parties on this issue, as well as the collective bargaining agreement and plan documents, and concluded that the intent of the parties, as clearly manifested in those documents, was that pensioners and widows were to have a vested right to health benefits for life, that the 1974 Benefit Plan was retained for the specific purpose of ensuring that those benefits would be provided where there was no other responsible party, and that the trustees' interpretation of the plan documents was inconsistent with the intent of the parties and the agreement they reached, and was arbitrary and capricious. Accordingly, the court enjoined the 1974 Benefit Plan and Trust from refusing to provide benefits to the plaintiffs.[5]

SUMMARY OF ARGUMENT

The issue in this case is simply the proper construction of a collective bargaining agreement, the National Bituminous Coal Wage Agreement, and a benefit plan created and maintained pursuant to that agreement. Contrary to the petitioner's arguments, the District Court and the Court of Appeals have not interfered with the collective bargaining process, nor have they violated ERISA. They have merely examined the documents in question and the bargaining history of the parties, and determined that the 1974 Benefit Plan's interpretation of those documents was clearly erroneous, arbitrary, and capricious, and that it frustrated the clear intent of the parties and the fundamental purpose of the trust itself.

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[5] Two other district judges, in similar cases involving the same issue, independently arrived at the same conclusion. *Schifano, et al. v. United Mine Workers of America 1974 Benefit Plan and Trust,* No. 83-0264-C(K) (N.D.W.Va., 2/23/87) [Kidd., J.], and *Crockett v. Vecellio and Grogan, et al.,* No. 1:85-1448 (S.D.W.Va., 2/4/87), [Hallanan, J.]. Both cases are on appeal to the Fourth Circuit and have been placed in abeyance pending the final resolution of this case.

ARGUMENT

I. Petitioner Presents No Important Statutory Question; This Case Involves No More Than An Interpretation Of A Collective Bargaining Agreement With Which Petitioner Disagrees.

Neither the District Court nor the Court of Appeals has rewritten the agreement of the parties to the National Bituminous Coal Wage Agreement in this case. They have merely determined that the 1974 Benefit Plan's understanding of its responsibility in carrying out that agreement is clearly wrong, and its interpretation of the benefit plan in this instance is arbitrary, capricious and contrary to the intent of the parties. That intent is clearly expressed in each collective bargaining agreement since 1974, when they provided that a pensioner who retired prior to the effective date of the agreement "will be entitled to retain his Health Services card *for life*," and that his widow "will retain a Health Services card *until her death or remarriage*." There has been no substantive change in that language since the 1974 agreement. Widows have been entitled to lifetime benefits since 1974, and the provision of lifetime medical benefits to pensioners has been the practice in the coal industry for more than 35 years. This Court has recognized that vested retirement rights such as retiree medical benefits may not be altered without the pensioner's consent. *Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971); *United Mine Workers Health and Retirement Funds v. Robinson*, 455 U.S. 562 (1982).

It is also well established that whether such benefits are vested depends upon the intent of the parties. *International Union, United Auto Workers v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). In *Yard-Man*, the Sixth Circuit held that life and health insurance benefits for retirees, similar to those in the present case, were intended to be lifetime benefits and were not extinguished by the expiration of

the contract. The court laid down the following principles for determining that intent:

> [T]he court should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent [citation omitted]. The intended meaning of even the most explicit language can, of course, only be understood in light of the context which gave rise to its inclusion [citations omitted]. The court should also interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties [citations omitted]. As in all contracts, the collective bargaining agreement's terms must be construed so as to render none nugatory and avoid illusory promises [citations omitted].

716 F.2d at 1479-80.

In determining the intent of the parties, the Sixth Circuit has repeatedly emphasized two factors weighing in favor of finding that retiree benefits survived the expiration of the collective bargaining agreement. In *Policy v. Powell Pressed Steel*, 770 F.2d 609 (6th Cir. 1985), the court summarized the holding of *Yard-Man* as follows:

> First, this court recognized that normally retiree benefits are vested [citation omitted]. This is true because retirees, with respect to their benefits, are unprotected in the collective bargaining process. Upon expiration of a collective bargaining agreement, a union owes no duty to bargain for continued nonvested benefits for retirees. [citation omitted.] A union may choose to forego nonvested retiree benefits in future negotiations in favor of more compensation for active employees. The union may not, however, "bargain away retiree benefits which have already vested in particular individuals. Such rights, once vested upon an employee's retirement, are interminable and the employer's failure to provide them [is] actionable under § 301 by the retiree." [citations omitted.]

> Second, the *Yard-Man* court recognized that "retiree benefits are in a sense 'status' benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintainted [citation omitted]."
>
> > "Thus, when the parties contract for benefits which accrue upon achievement of retiree status, *there is an inference that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree* [citations omitted]" (emphasis in original).

770 F.2d at 613-14.

This approach has been widely adopted by the courts. See also, *Bower v. The Bunker Hill Co.*, 725 F.2d 1221 (9th Cir. 1984); *Local 150-A, UFCW v. Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985); *Weimer v. Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985); *Upholsterer's International Union v. American Pad & Textile Company*, 372 F.2d 427 (6th Cir. 1967); *Hansen v. White Motor Corp.*, 788 F.2d 1186 (6th Cir. 1986).

It is difficult to perceive how the intent to create a vested, lifetime benefit could be much more clearly expressed than by saying that a pensioner "will be *entitled* to retain his Health Services card *for life*."[6] The District Court found that the parties intended to "provide the retired mine worker with health benefits as a vested, lifetime benefit," and the Court of Appeals agreed that the intent of the parties was "to guarantee their provision for life." The petitioner neither contends that this finding is wrong, nor does it argue that the Court of Appeals' earlier ruling that Royal is not obligated to provide those benefits was erroneous and that Royal is responsible for fulfilling the promise of lifetime benefits

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[6] Of the cases cited, and numerous other similar decisions, only *Policy v. Powell Pressed Steel Co.* involved comparably explicit language. The language in *Policy* provided that pensioners would receive coverage "during the lifetime of the pensioner."

to its pensioners. Petitioner simply contends that, whatever the consequences, it has no obligation to these pensioners and widows.

The necessary consequence of the petitioner's interpretation of the collective bargaining agreements and plan documents is that these pensioners have a vested right to lifetime health benefits, but no one is obligated to provide them with those benefits. This anomaly, while apparently insufficient to cause the trustees to reexamine their assumptions in interpreting the provisions of the plan, led the District Court to conclude that an examination of the bargaining history between the parties with respect to retiree benefits would be both appropriate and helpful.

In doing so, the District Court had before it an abundance of evidence, including the National Bituminous Coal Wage Agreements of 1946, 1947, 1948, 1949, 1950, 1974, 1978, 1981, and 1984, resolutions of the UMWA Welfare and Retirement Fund, by which its trustees provided health and pension benefits for retired miners, dated from 1946 to 1974, the benefit plans and summary plan descriptions for the 1974 Benefit Trust for the 1974, 1978, 1981, and 1984 wage agreements, public statements of the BCOA in connection with the 1978 negotiations, internal memoranda of the UMWA Health and Retirement Funds relating to the development by the trustees of interpretations of the "no longer in business" language after both the 1978 and 1981 agreements, minutes of meetings of the trustees, various other documents, and the testimony of numerous witnesses, including representatives of both the BCOA and UMWA in the 1978, 1981, and 1984 negotiations. The witnesses included all three trustees of the Funds during the term of the 1981 agreement, four members of the union's bargaining team during the 1978, 1981, and 1984 negotiations, including the union's president, general counsel, and benefits specialist in 1978 and 1981, and three members of the BCOA bargaining team in 1978, 1981, or 1984, including the chairman of the BCOA benefits subcommittee.

From that evidence, the District Court made a number of significant findings. The court found that pensioners had received health benefits from the Welfare and Retirement Fund "concurrent with their pension benefits, that is, for life" from 1946 to 1974, and that those benefits were never terminated or reduced, and did not terminate at the end of the collective bargaining agreement. A. 14a-15a. Beginning in 1974, when the benefits were first set out in the collective bargaining agreement itself, each successive agreement contained the promise of health benefits "until death" or "for life", and those provisions were never changed by the parties. A. 15a-16a. The court also found that the parties had clearly bargained in previous contracts for the extension of lifetime benefits to additional beneficiaries. A. 22a.

The court further found that in changing from a multiemployer plan to individual employer plans in the 1978 agreement, the parties intended to change "the method of providing those benefits", but "never intended to change the expectancy of the pensioners to receive those benefits." A. 18a. The court found the retention of the 1974 Benefit Trust as a "safety net" to be a further indication of the intent of the parties "to ensure that the pensioners' historical entitlement to lifetime benefits continued." A. 22a.

With respect to the 1981 negotiations and the change in the "no longer in business" language, the court noted that the change was completely noncontroversial, and that the intent of the change was to protect the 1974 Benefit Plan and Trust from manipulation by employers seeking to transfer their liabilities to the Trust, by requiring the pensioners to "exhaust their remedies against a signatory employer liable for their benefits", to exhaust the assets of that employer, and "to pursue any successor, assigns, related divisions, subsidiaries, or parent corporation, to the extent such entity might be liable for the benefits." A. 27a. The court found it inconceivable that the modification could have been intended or con-

templated to have the effect of leaving pensioners without benefits if their last employer failed to become signatory to a successor agreement after their retirement, in view of the testimony that the change was made "without even a suggestion of dissent from the Union bargaining counsel or membership." A. 27a.

When the parties agreed to change the method of providing benefits in 1978, the BCOA wanted a system of private insurance, and the UMWA insisted that pensioners' right to lifetime benefits be protected. The compromise they reached addressed both concerns, and the 1974 Benefit Plan was retained to provide a "safety net" for those pensioners. There was simply no evidence in the record suggesting that the safety net was intended to be only a partial one, or that the parties ever even contemplated or discussed the possibility that pensioners could lose their benefits under the circumstances of this case. The petitioner's suggestion that they intended or agreed to that result is nonsense. Both the District Court and the Court of Appeals rejected that contention:

> Neither the 1978 nor 1981 wage agreements, the trust documents incorporated therein, nor the bargaining history presented to the Court at trial, evidence an intent by the parties to reduce the level of benefits, to exclude or eliminate certain categories of beneficiaries from benefits, to cause the forfeiture or loss of benefits upon the occurrence of certain contingencies, or to change the nature of the benefits provided.

A. 23a. The Court of Appeals agreed, stating that "It is apparent from the record that the parties . . . intended to change the method of providing health benefits, but they did not intend to create new, latent loopholes to coverage." A. 6a.

The District Court concluded that the parties agreed to retain the 1974 Benefit Plan and Trust in the 1978 negotiations for the purpose of "securing the promise of lifetime benefits to pensioners who might become 'or-

phaned' by their last employer, and that those benefits were "to be continued either from the employer or successor or from the trust." A. 27a, 18a.

The issue in this case was simply the proper construction of the collective bargaining agreement and the benefit plan which is a part of that agreement. As the Court of Appeals concluded, "[t]o construe the contract to create no liability on the part of the 1974 Benefit Plan would have the effect of defeating the expressed intention to provide lifetime benefits." A. 6a. On the other hand,

> The 1974 Benefit Plan and Trust was established and continued in order to supply the health benefit needs of "orphaned" retirees, and thus construing the contract to impose that obligation on the trust fund, when the legal obligations of the former employer has terminated, can only further the purposes for which the trust fund was created. A. 7a.

What the District Court and the Court of Appeals have rejected in this case is not the agreement of the parties but the myopic determination of the 1974 Benefit Plan to interpret the "financially unable" phrase of the benefit plan as something more than a requirement that the retirees look first to the *liable* employer, and the arbitrary assumption that the parties deliberately intended and agreed to create a situation where the 1974 Benefit Plan has no responsibility to these pensioners whenever a parent exists, without regard to that parent's legal obligation to provide their benefits. While the parties to a collective bargaining agreement are free to negotiate terms that make no sense, there is no reason to assume that they did so in the absence of evidence to that effect. The Court of Appeals simply recognized that the 1974 Benefit Plan's "strict adherence to the literal terms in the agreement" leads to a result that "has the effect of defeating the expressed intention to provide lifetime benefits," and that its interpretation adopted by the

trustees flatly contradicts the primary purpose of the Trust. The court's refusal to permit that result is no threat to national labor policy.

The petitioner's predictions of the dire consequences of the Fourth Circuit's decision are equally unfounded. When the parties agreed to retain the 1974 Benefit Plan in the 1978 negotiations, they initially funded that plan by a contribution of 2 cents per hour worked by UMWA employees. The Plan accumulated so much money during the term of the 1978 agreement that the parties agreed to reduce the contribution rate to zero during the terms of both the 1981 and 1984 agreements. The assets produced by the 2 cent contribution rate during the three-year term of the 1978 agreement have been sufficient to provide benefits to all "orphaned" pensioners for a period of ten years, and even with the petitioner's worst-case projection, would last almost another two years.[7] Although there has been a decline in the assets of the Trust over the past two years, the 1974 Benefit Plan still has assets in excess of $27 million, and much of the decline has been due to factors other than the inclusion of additional beneficiaries.

Moreover, recognizing the need for additional funding for the 1974 Benefit Plan, the United Mine Workers and the Bituminous Coal Operators Association recently negotiated a new collective bargaining agreement, the National Bituminous Coal Wage Agreement of 1988. That agreement provides, for the first time since the 1978 agreement, new contributions to the 1974 Benefit Plan and Trust at the rate of 8 cents per hour, four times the rate in the 1978 agreement. The parties also took further steps to protect the solvency of the Trust and to

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[7] Petitioner's estimate of 6,000 additional beneficiaries is highly inflated. LTV Corporation, for example, is in bankruptcy, but has continued to provide benefits for its pensioners pursuant to interim legislation or agreements with unions representing its employees, including the UMWA.

prevent responsible employers from seeking to shift their obligations to the 1974 Benefit Plan, by creating a system of withdrawal liability for health benefit obligations similar to the statutory provisions of ERISA.

In addition, each agreement since 1978 has included a guarantee by the BCOA and signatory employers of the benefits to be provided by all four trusts, including the 1974 Benefit Plan, and the signatory employers are required to provide whatever additional contributions are necessary to fund the promised benefits. The 1988 agreement extends that guarantee to 1993. Both the existing beneficiaries and those for whom the 1974 Benefit Plan has denied responsibility will receive the benefits they were promised.

II. The Decision Of The Court Of Appeals Does Not Violate Sections 402 And 404(a)(1)(D) Of ERISA.

The petitioner's assertion that the decision of the Court of Appeals conflicts with ERISA's requirement that benefit plans be established and maintained pursuant to a written document, and that plan fiduciaries discharge their duties in accordance with the documents and instruments governing the plan, fails for much the same reason as its contention that the court improperly interfered with the collective bargaining process. The collective bargaining agreement which creates the benefit plan is part of the "documents and instruments governing the plan", and where the plan fiduciaries insist on interpreting a provision of the benefit plan in a manner which directly conflicts with the clear intent of the parties, that decision is not insulated from judicial review simply because the trustees insist that their interpretation of the plan is the only interpretation conceivable.

Where the trustees' interpretation of the plan documents is arbitrary and capricious, the court is justified in rejecting it. In reviewing that interpretation, the

Court should consider whether the trustees' interpretation is contrary to the language of the provision in question or renders provisions of the plan superfluous, whether it is consistent with the plan's purposes, whether it is consistent with the provision's purpose, and whether it is consistent with prior similar interpretations. *Donovan v. Carlough*, 576 F. Supp. 245, supplemented at 581 F. Supp. 271 (D.C. D.C. 1984), *aff'd*, 753 F.2d 166 (D.C. Cir. 1985). The District Court and the Court of Appeals properly concluded that the trustees' interpretation was contrary both to the purpose of the trust, to provide for "orphaned" pensioners, and to the purpose of the "no longer in business" provision, which existed to protect the 1974 Benefit Plan from efforts by responsible employers to dump their obligations on the Plan, and not for the purpose of causing pensioners to forfeit their benefits, and that it rendered illusory the clear promise of lifetime benefits contained in the collective bargaining agreement.

The cases cited by the petitioner are completely inapplicable to this situation. This case does not involve an alleged oral modification of a written plan, as did *Nachwalter v. Christie*, 305 F.2d 956 (11th Cir. 1986), and *Northwest Administrators, Inc. v. B.V. and B.R., Inc.*, 813 F.2d 223 (9th Cir. 1987). Nor does it involve the ignoring of an unambiguous term of a benefit plan in the interest of some general principle of equity, as in *Cummings v. Briggs and Stratton Retirement Plan*, 797 F.2d 383 (7th Cir. 1986). Rather, it involves only a determination that the trustees' interpretation of ambiguous language in the benefit plan was contrary to the very clear language in the collective bargaining agreement and to the fundamental purposes of the plan itself. That determination advances rather than threatens the policy goals of ERISA.

CONCLUSION

Notwithstanding the petitioner's attempt to frame the issue in this case as an invasion by the Court of Appeals of the processes of free collective bargaining and fiduciary duty, it is simply a disagreement over the interpretation of the provisions of a single collective bargaining agreement and the benefit plan it established. The petitioner remains convinced that its interpretation was correct. Neither the District Court nor the Court of Appeals was persuaded. Their determination was clearly correct, and the petition for certiorari should be denied.

Respectfully submitted,

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